

**LOCAL
GOVERNMENT LAW
AND
ADMINISTRATION**

VOLUME III

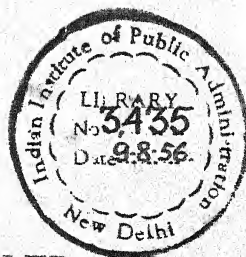
LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

By
THE RIGHT HONOURABLE THE
LORD MACMILLAN
A LORD OF APPEAL IN ORDINARY
AND OTHER LAWYERS

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*Borrowing.***CONSOLIDATION OF DEBT.***See BORROWING.*

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Attorney-General	A.-G.
Brothers	Bros.
Company	Co.
Corporation	Corpn.
Home Office	H.O.
Justices	..	..	..	..	..	JJ.
Limited	..	..	..	..	..	Ltd.
London County Council	..	..	..	..	..	L.C.C.
Local Government Act	..	..	..	..	..	L.G.A.
Medical Officer of Health	M.O.H.
Ministry of Agriculture and Fisheries	M. of A.
Ministry of Health	M. of H.
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Public Health Acts	P.H.A.
Railway Company	Rail. Co.
Rating and Valuation Act	R. & V.A.
Rural District Council	R.D.C.
Statutory Rules and Orders	S.R. & O.
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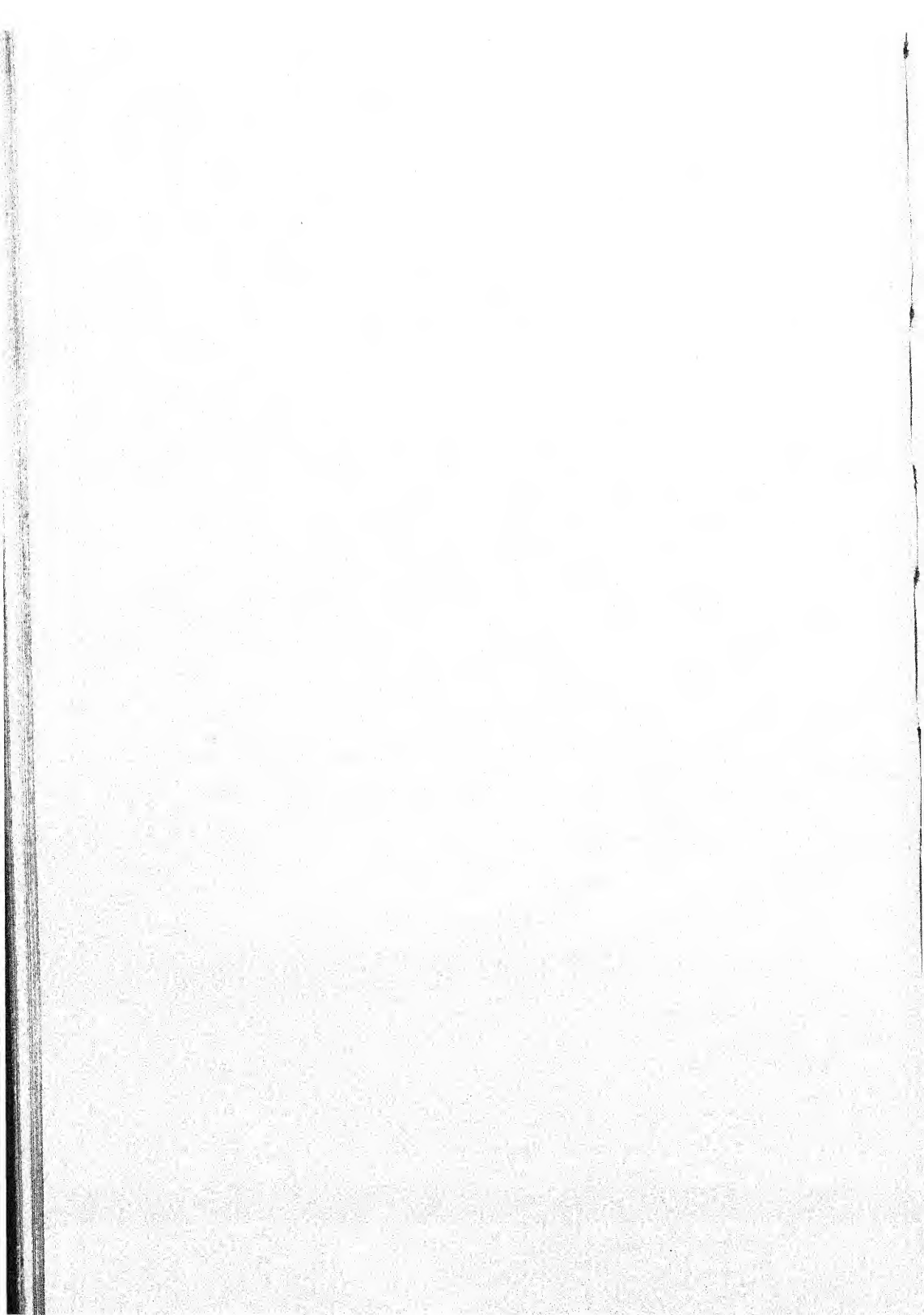


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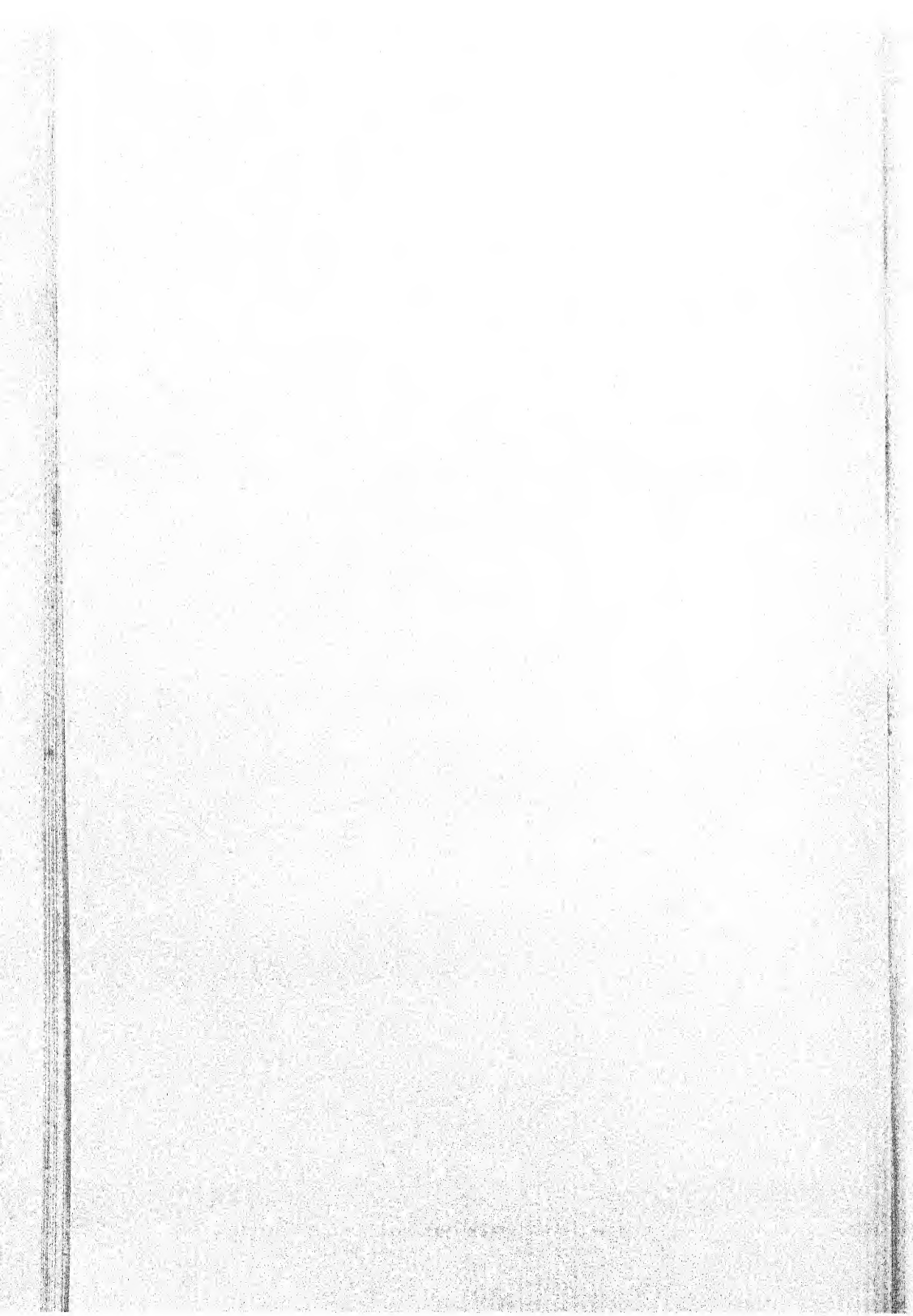


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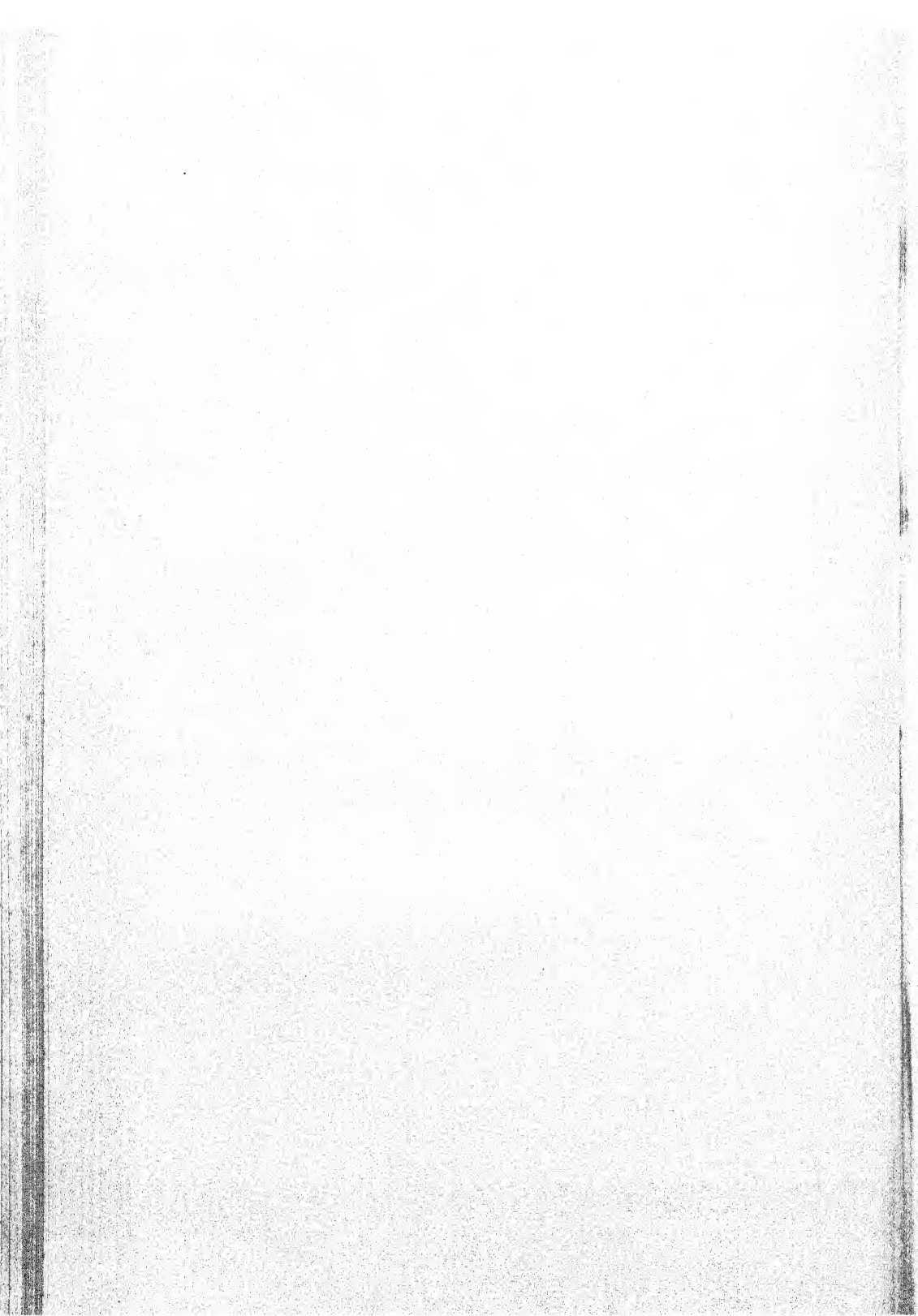
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CENTRAL AND SENIOR SCHOOLS

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See also titles :

CONTINUATION SCHOOLS ;
ELEMENTARY EDUCATION ;
HIGHER EDUCATION ;

SECONDARY EDUCATION ;
TECHNICAL AND COMMERCIAL EDUCATION.

See also title EDUCATION for a complete list of titles dealing with this subject with an indication of the scope of each. For courses of instruction under the Unemployment Act, 1934, see EDUCATION AND PUBLIC ASSISTANCE.

Under the Education Act, 1918, sect. 2 (1) (a) (a), an improvement in the organisation of public elementary school education was made possible, for provision was made for the establishment of central schools or classes in all areas, and local education authorities were given a direct lead as to the direction in which educational advance should be made.

The Education Act, 1921, has re-enacted the requirements connected with the provision of central schools and classes (b). [1]

Establishment of Central Schools.—With the purpose of providing practical and advanced instruction, a duty is now placed on local education authorities of exercising their powers by making, or otherwise securing, adequate and suitable provision for including, at appropriate stages, practical instruction in the curriculum of public elementary schools (b).

A further duty is placed on them of organising in public elementary schools courses of advanced instruction for the older or more intelligent pupils, including those who remain at school beyond the normal school leaving age (b).

This advanced instruction is to be suitable to the ages, abilities and requirements of the children, and it is to be given in central schools, central or special classes or by some other means that will be equally effective.

It will be seen that the wording of this requirement is very wide, and gives almost unlimited latitude to the authority. It would seem that this freedom was intentional so that a departure could be made from the more formal or academic studies into the realms of practical work, a freedom that would allow experiments to be made on the best lines in order to provide a type of education that would be suitable to

(a) Repealed and re-enacted in Education Act, 1921, s. 20 ; 7 Statutes 139.

(b) *Ibid.*

each particular pupil, and that would be the most appropriate, having regard to local industries and other circumstances. [2]

Practical Instruction.—It is stated in the Act, however, that practical instruction means instruction in cookery, laundry work, housewifery, dairywork, handicrafts and gardening, and any other subjects that the Board of Education declare to be subjects of practical instruction (c). [3]

Advanced Instruction.—The expression “advanced instruction” has never been officially defined. It will, however, be observed that the Act left a very wide discretion to local education authorities in the nature of the advanced instruction to be provided, and as no attempt has been made by the Board of Education to suggest or to prescribe the exact lines on which the courses of instruction should be organised, local authorities have accordingly been free to develop the methods which they consider best suited to their local circumstances and needs.

The Board of Education, in January, 1925, intimated that in future they would find it difficult to approve any scheme of school planning that failed to make provision for the advanced instruction of children over the age of eleven, by giving opportunities for suitable classification and organisation (d). [4]

Types of Schools or Classes providing Advanced Instruction.—The exact type of school or class where the advanced instruction is to be provided is wisely left to the local education authority, for it is obviously impossible, even if it were desirable, to prescribe a standard type of school for this particular work. In large urban areas of sufficient size the central school will be the most suitable. In most cases, the number of children in contributory junior schools will determine whether there shall be selective and/or non-selective central schools or merely central or special classes held at whichever school under the authority is most suitable, having regard to the position, building, equipment, staff, means of transport, etc.

The designation of the schools at which such advanced instruction is given is optional. The term “senior school” used by some local education authorities to describe schools comparable with those called “central schools” by other authorities is in accordance with the Act, although it is doubtful if there is wisdom in permitting a diversity of nomenclature when already business men complain of undue complexity in the classifying of various types of schools. [5]

Modern Schools.—The Consultative Committee of the Board of Education, under the chairmanship of Sir W. H. Hadow, were asked to consider and report upon the organisation, etc., of courses for children who would remain at school (other than a secondary school) up to the age of fifteen, and in 1926 their report (popularly known as the Hadow Report) (e) was issued. This gave a definite lead to local education authorities in regard to advanced instruction, and suggested, *inter alia*, that both selective and non-selective central schools should be known as “modern” schools to distinguish them from “grammar” schools, the suggested name for what were known as secondary schools. So far, this nomenclature has not been adopted to any extent.

(c) S. 170 (4); 7 Statutes 213.

(d) Board of Education Circular, 1350 (“The Organisation of Public Elementary Schools”).

(e) Report of the Consultative Committee of the Board of Education on the Education of the Adolescent.

"The New Prospect in Education," issued in 1928 (f), provided still further guidance for the provision of advanced instruction, largely by giving examples of various types of organisation which might be suggestive to authorities who were considering, or actually engaged in, reorganisation. [6]

Curriculum.—The Consultative Committee recommended that in general the curriculum of the modern schools (and consequently of central schools, senior schools, etc.) should provide for a three-year or a four-year course. These courses should be simpler and more limited in scope than those of the grammar (secondary) schools.

Although the subjects included in the curriculum of the modern schools, and central or senior classes, would be generally made the same as those in the secondary schools, more time and attention should be devoted in the former to handwork and similar pursuits.

The committee did not recommend that in modern schools the last two years should be vocational in character. They were of opinion that the treatment of the subjects of the curriculum should be practical in the broadest sense, and should be brought directly into relation with the facts of everyday life. The courses of instruction, though not merely vocational or utilitarian, should be used to connect up the school work with the interests arising from the social and industrial environment of the pupil. [7]

Administration.—The committee stated that education after the age of eleven would best be served if there were a revision of educational administration. A number of suggestions were made, including the introduction of legislation for (1) the abolition of local education authorities for elementary education only; (2) the transference to the education authorities for higher education of all powers of those authorities for elementary education serving less than a certain minimum population, and vesting with full powers for higher education those authorities for elementary education that serve such a minimum population; and (3) the creation of new provincial authorities into which would be merged authorities for elementary education only and those for higher education.

They also suggested that there might be close co-operation between existing authorities for elementary and those for higher education to ensure that the latter should be consulted before the former introduced central or modern schools or any other form of post-primary education. [8]

Conclusion.—Although the necessity for national economy has retarded "reorganisation" and the consequent provision of central schools and other forms of advanced instruction, sect. 20 of the Education Act, 1921, continues to be operative, and no doubt local education authorities will continue to develop their policies of providing post-primary education for all children in a school especially organised for the purpose as soon as national finances will permit. [9]

London.—The L.C.C. as local education authority is responsible for the administration of the Education Act, 1921 (g). Each of the council's central schools has a commercial or technical bias (in some schools the

(f) Board of Education, Educational Pamphlets, No. 60 ("The New Prospect in Education").

(g) 7 Statutes 130.

bias is dual) and the curriculum is considered and framed with a view to meeting the needs of the district. In addition to the ordinary central schools the council has established two central schools for myopic children.

The course at the central schools is for five years. Where accommodation is available pupils are allowed to remain a sixth year. The council awards a number of junior county exhibitions tenable from the end of the term in which a pupil attains the age of fourteen years, which carry with them grants of the annual value of £14 or £13. One of the conditions governing the award of these exhibitions is that the income of the parents is below the limit prescribed by the council.

In pursuance of sect. 36 of the Education Act, 1921 (*h*), a separate body of eleven managers is appointed for each of the council's central schools, but in some cases two central schools for boys and girls respectively are placed under one body of managers where the schools are housed on the same site or serve the same district. [10]

(*h*) 7 Statutes 150.

CENTRAL DEPARTMENTS

See GOVERNMENT CONTROL and particular titles, *e.g.* BOARD OF TRADE.

CENTRAL ELECTRICITY BOARD

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See also titles : ELECTRICITY COMMISSIONERS ;
ELECTRICITY SUPPLY ;
GOVERNMENT CONTROL.

See, generally, Halsbury's Laws of England, 2nd ed., Vol. 12, title "Electricity Supply," pp. 630-646.

General Outline.—The Central Electricity Board was established by the Electricity (Supply) Act, 1926 (a), which Act defines the powers and duties of the Board. The Board, which has offices at Charing Cross, London, S.W.1, consists of a chairman and seven members, appointed by the Minister of Transport. [11]

Broadly, the duty of the Board is to supply electricity to authorised undertakers; and for that purpose to organise the generation of electricity throughout Great Britain by selecting stations at which the generation shall take place, arranging for the working of these stations by authorised undertakers or others, purchasing the whole output of the selected stations, and reselling it, without earning profits, to any authorised undertakers who require it. In order to link up the selected stations, and to make the electricity available for supply, the Board have constructed a system of main transmission lines throughout the country, commonly known as the Grid. In addition to selecting existing generating stations, the Board can arrange for the construction of new generating stations which will be required as selected stations ;

but only as a last resort may the Board acquire, construct or work generating stations themselves. [12]

Delegation of Powers.—The Board may delegate to any authorised undertakers any of their powers which they think can be more expediently exercised locally; they may delegate any of their powers and duties to any association of owners of selected stations where proposals are made to them for this purpose; but they may not delegate any of their powers with regard to selected stations without the consent of the owners thereof. The Board may not delegate their power of adopting schemes or fixing a tariff under the Act (b).

They may appoint consultative technical committees of engineers of undertakings comprising selected stations (c). [13]

Preparation and Adoption of Schemes.—The objects for which the Board are established are effected through the adoption by them of schemes, each of which relates to an area specified therein, prepared under sect. 4 of the Act of 1926 by the Electricity Commissioners. Schemes have been adopted by the Board for areas which together cover practically the whole of Great Britain. When a scheme is adopted and published, it is the duty of the Board to carry out and give effect to it. Authorised undertakers upon whom obligations are imposed by the scheme may, within one month of publication, require the Board to refer any matter complained of to arbitration by an arbitrator appointed from a panel set up by the Lord Chancellor (d). A scheme may from time to time be altered or extended by a scheme made and adopted in like manner, and subject to the like right of appeal, as the original scheme; but a generating station included in a scheme as a selected station cannot cease to be a selected station without the consent of its owners (e).

As soon as the Board, as respects any area or part of an area, notify that they are in a position to supply electricity, they come under an obligation to supply, either directly or indirectly, to any authorised undertakers in that area or part, such an amount of electricity as they require for their undertaking at a price ascertained in accordance with the provisions of the Act (f). This obligation is subject to conditions and limitations which will be dealt with later. [14]

Contents of Schemes.—A scheme deals with the following matters (g):

(a) *Generating Stations.*—The determination of what generating stations (h) (whether existing stations or new stations) shall be the stations at which electricity shall be generated for the Board. These are referred to in the Act as "selected stations." [15]

(b) *Interconnection.*—The interconnection, by means of main transmission lines (i) to be constructed or acquired by the Board, of (i.) selected stations with one another; (ii.) selected stations with the systems of authorised undertakers; (iii.) the system of the Board in

(b) Electricity (Supply) Act, 1926, s. 2 (2)—(4); 7 Statutes 794.

(c) *Ibid.*, s. 3; *ibid.*

(d) *Ibid.*, s. 4 (3); *ibid.*, 796.

(e) *Ibid.*, s. 4 (5); *ibid.*

(f) *Ibid.*, s. 10; *ibid.*, 801.

(g) *Ibid.*, s. 4 (1); *ibid.*, 795.

(h) For definition of "generating station," see *ibid.*, s. 51 (1); *ibid.*, 821.

(i) For definition of "main transmission line," see Electricity (Supply) Act, 1919, s. 36; also Electricity (Supply) Act, 1926, s. 51 (1); *ibid.*, 776, 821.

a specified area covered by a scheme with their system in any other area with respect to which a scheme is in force or may subsequently be made. [16]

(c) *Standardisation of Frequency.*—Such standardisation of frequency as may be essential to the carrying out of the proposals for interconnection. [17]

(d) *Temporary Arrangements.*—The enabling or requiring temporary arrangements (to be in force during the carrying out of the works specified in the scheme) to be made between the Board and owners of generating stations (whether authorised undertakers or not), with respect to the giving and taking to and by the Board of supplies of electricity, and with respect to the working of generating stations (whether selected stations or not) by their owners. [18]

(e) *Supplemental, Incidental and Consequential Provisions* as may be necessary or expedient. [19]

Exclusion from Schemes.—Important exceptions are made by the proviso to sect. 4 (1) of the Act of 1926 in the cases of—(i.) a railway generating station (*k*) operated by a railway company at the date of the passing of the Act; (ii.) a generating station belonging to any canal, inland navigation, dock or harbour undertakers, and operated by the owners at the same date; (iii.) a private generating station (*l*). No such generating station can be included in a scheme as a selected station without the consent of the owners; nor can the owners of such a station be required to enter into any temporary arrangements under a scheme. Further, a scheme cannot authorise the acquisition of a main transmission line belonging to any such undertakers, or to the owners of a private generating station, without their consent. [20]

Selected Stations. (a) *Existing Stations becoming Selected Stations.*—The Board are to make arrangements with the owners of a selected station for the operation of the station in accordance with the Act, and for such extensions and alterations as may be required by the scheme, or from time to time directed in addition by the Board, with the approval of the Electricity Commissioners. If, however, the owners consider that such additional directions impose upon them an unreasonable financial burden, provision is made for arbitration by an arbitrator selected from the panel set up by the Lord Chancellor (*l*). If the owners of the station are unwilling to enter into or fail to carry out arrangements so made by the Board, the Minister of Transport may by order empower any authorised undertakers or other company or person approved by the Board (or failing such, the Board) to acquire the station. The price is to be determined on the scale indicated in the First Schedule to the Act. On payment or tender of the price the Minister may make an order vesting the station in the purchaser; but the order authorising the acquisition of the station does not come into force till it has been laid before each House of Parliament for not less than thirty sitting days. If the station is in the district of a joint electricity authority, that authority is to be given a first opportunity of acquiring it (*m*). In the case of a generating station acquired by

(*k*) For definitions of "railway generating station" and "private generating station," see Electricity (Supply) Act, 1919, s. 36; 7 Statutes 776.

(*l*) Electricity (Supply) Act, 1926, s. 5 (1); *ibid.*, 796.

(*m*) *Ibid.*, s. 5 (2) and First Schedule; *ibid.*, 797, 822. See also the Scale of Depreciation (Acquisition of Selected Stations and Main Transmission Lines) Special Order, 1931 (S.R. & O., 1931, No. 714).

the Board, the Board may carry out such extensions or alterations as are required by the scheme, or as they think fit, and may either operate it themselves or make arrangements with any authorised undertakers or other company or person to operate it; but the Board must first endeavour to arrange with the joint electricity authority (where there is one) to operate the station, and must not operate it themselves unless they satisfy the Electricity Commissioners that they are unable to enter into any other arrangement on reasonable terms (*n*). [21]

(b) *New Selected Stations*.—Where a new generating station is required by the scheme, the Board may arrange with any authorised undertakers in, or in the neighbourhood of, whose area of supply the station is to be situated, for the provision of the station (*o*). If the Board satisfy the Electricity Commissioners that they cannot make such arrangements on reasonable terms, the Commissioners may by special order authorise the Board or any company or person to provide the station (*p*). Where the Board themselves provide the station, they may make arrangements with any authorised undertakers or other company or person to operate it, or the Board may operate it themselves, if they satisfy the Commissioners that they cannot make such arrangements on reasonable terms (*q*). [22]

(c) *Obligations of Owners of Selected Stations*.—Under sect. 7 of the Act the owners of a selected station must (from a date fixed by the Board) operate the station so as to generate such quantity of electricity at such rates of output, and at such times as the Board may direct. These operations must be conducted with due regard to economy and efficiency.

The owners must sell to the Board all electricity generated (*r*). The owners are entitled to be supplied by the Board from the station with such amount of electricity as they may require for the purposes of their undertaking, not exceeding the amount generated at the station. This is without prejudice to the powers of the owners to demand a supply under the other provisions of the Act, and subject to the provisions of the Act enabling the Board to require authorised undertakers to take the whole of their supply from the Board (*s*). [23]

(d) *Price of Electricity to Owners of Selected Stations*.—The price to be paid by the Board for electricity generated is to be the cost of production (unless otherwise agreed). This cost is to be ascertained in accordance with the rules in the Second Schedule to the Act (*t*). The price to be paid by the owners for electricity supplied to them is (unless otherwise agreed) to be either (*i*) the cost of production as above, adjusted according to the load factor (*u*) and power factor (*a*) of the supply given to the owners of the station, together with a proper proportion of the Board's expenses other than those incurred in the

(n) Electricity (Supply) Act, 1926, s. 5 (3); 7 Statutes 797.

(o) *Ibid.*, s. 6 (1); *ibid.*

(p) *Ibid.*, s. 6 (2); *ibid.*

(q) *Ibid.*, s. 6 (3); *ibid.*

(r) *Ibid.*, s. 7 (1); *ibid.*, 798.

(s) *Ibid.*, s. 7 (2); *ibid.*; and see s. 10 (2).

(t) *Ibid.*, s. 7 (3); *ibid.* See also the Scale of Depreciation (Cost of Production at certain Selected Generating Stations) Special Order, 1931 (S.R. & O., 1931, No. 701).

(u) See Electricity (Supply) Act, 1926, s. 51 (3) and Seventh Schedule; 7 Statutes 822, 825. See also the Electricity (Allocation of Cost of Production) Regulations, 1929 (S.R. & O., 1929, No. 1015).

(a) See Electricity (Adjustment of Price according to Power Factor) Regulations, 1929 (S.R. & O., 1929, No. 1016).

purchase or generation of electricity; or (ii.) according to the tariff fixed under the Act, whichever is the lower (*b*). The Board are to make monthly payments on account (*c*), but these will be subject to a later adjustment as soon as the actual figures for the year of account can be ascertained. Provision is made for the determination of any question arising under sect. 7 of the Act, between the Board and the owners of a selected station (*d*). If the question relates to the cost of production, it is decided by an auditor appointed by the Minister of Transport, and in any other case is decided by the Electricity Commissioners.

Where authorised undertakers who are owners of an existing generating station which becomes a selected station, and who take a supply from the Board, prove to the satisfaction of the Electricity Commissioners that the cost of taking that supply on the terms provided by the Act in any year exceeds the cost they would have incurred in generating the like quantity of electricity, had the Act not been passed, the amount charged by the Board must be so adjusted that the amount charged in that year does not exceed the cost which, in the opinion of the Commissioners, the undertakers would have incurred in themselves generating the electricity (*e*). [24]

Main Transmission Lines.—As soon as may be after a scheme has been adopted as respects any area or part of an area, the Board are to construct the main transmission lines required for the interconnection of selected stations with one another, and with the systems of authorised undertakers in accordance with the scheme (*f*). Where a scheme provides for the acquisition by the Board of a main transmission line belonging to any authorised undertakers, the line may be vested in the Board by order of the Minister of Transport, on notice being given by the Board to the undertakers, and on payment or tender of the price determined in accordance with the First Schedule to the Act (*g*). Provision is made for the defraying by the Board of reasonable expenses incurred by authorised undertakers in the necessary alteration or replacement of switchgear connected with a line acquired under the section (*h*). The Board may, by agreement, use the main transmission lines of any authorised undertakers or other persons, for such time and upon such terms as may be agreed (*i*). [25]

Standardisation of Frequency.—The Board may require any authorised undertakers or the owners of any selected station to amend or alter the frequency employed in their undertaking or station, if and so far as such amendment or alteration is required to effect (i.) the standardisation of frequency provided by a scheme; or (ii.) such standardisation of frequency as the Board with the approval of the Electricity Commissioners may think expedient; subject to the payment by the Board of any expenses properly incurred in carrying such requirement into effect (including the cost of altering or replacing plant

(*b*) Electricity (Supply) Act, 1926, s. 7 (4); 7 Statutes 798.

(*c*) *Ibid.*, s. 7 (5); *ibid.*

(*d*) *Ibid.*, s. 7 (6); *ibid.*

(*e*) *Ibid.*, s. 13; *ibid.*, 803.

(*f*) *Ibid.*, s. 8 (1); *ibid.*, 799.

(*g*) *Ibid.*, s. 8 (2); *ibid.* See also the Scale of Depreciation (Acquisition of Selected Stations and Main Transmission Lines) Special Order, 1931 (S.R. & O., 1931, No. 714).

(*h*) Electricity (Supply) Act, 1926, s. 8 (3); 7 Statutes 799.

(*i*) *Ibid.*, s. 22; *ibid.*, 808.

belonging to consumers) (*k*). Provision is made for the determination, either by the Commissioners or by arbitration, of the amount of the expenses properly incurred (*l*). The Board must, if required, advance free of interest the necessary money, and authorised undertakers are authorised and required to comply with the Board's requirements (*k*).

[26]

The Board may borrow under the Act for the purposes of the expenses and advances authorised by sect. 9 of the Act, but interest and sinking fund charges in respect of money so borrowed are to be excluded in any computation of the Board's receipts made for the purposes of rating the property occupied by the Board (*m*). The Board are to be repaid by the Electricity Commissioners the sums required to meet the interest and sinking fund charges in respect of money so borrowed, and the payment of such sums is to be treated as part of the Commissioners' expenses, and to be apportioned by the Commissioners amongst the joint electricity authorities and authorised undertakers of Great Britain, not in accordance with sect. 7 of the Electricity (Supply) Act, 1922 (*n*), but on the basis of revenue received from the sale of electricity, other than that sold in bulk to authorised undertakers (*o*). [27]

The frequency employed by a railway company or by authorised undertakers for a supply to a railway company for haulage or traction can only be required to be altered by an order under sect. 16 of the Railways Act, 1921 (*p*). [28]

The powers of the Electricity Commissioners, under sect. 24 of the Electricity (Supply) Act, 1919 (*q*), as to the amendment or alteration of frequency, are not to be exercisable in any area in which a scheme is in force (*r*). [29]

Powers and Obligations of the Board to supply Electricity. (*a*) *General*.—The Board must supply, either directly or indirectly (*s*), any authorised undertakers in any area or part of an area as to which they have notified that they are in a position to supply, such an amount of electricity as the undertakers require for their undertaking (*t*).

The Board may not supply electricity directly to authorised undertakers in the area of supply of a power company without the consent of the power company unless (*i*.) the undertakers have an absolute right of veto (*u*) on any right of the power company to supply electricity within the area of the undertakers; or (*ii*.) the power company are unable or unwilling to supply electricity to the undertakers on reasonable terms and conditions—to be determined in case of dispute by the Electricity Commissioners (*a*).

The Board may not supply directly to authorised undertakers in the district of a joint electricity authority, electricity which the joint authority are authorised to supply, without the consent of the authority (*b*).

(*k*) Electricity (Supply) Act, 1926, s. 9 (1); 7 Statutes 799.

(*l*) *Ibid.*, s. 9 (4); *ibid.*, 800.

(*m*) *Ibid.*, s. 9 (2); *ibid.*

(*n*) 7 Statutes 783.

(*o*) Electricity (Supply) Act, 1926, s. 9 (3); 7 Statutes 800.

(*p*) *Ibid.*, s. 9 (5). For s. 16 of the Railways Act, 1921, see 14 Statutes 329.

(*q*) 7 Statutes 771.

(*r*) Electricity (Supply) Act, 1926, s. 9 (6); 7 Statutes 800.

(*s*) For definition of "indirect supply," see *ibid.*, s. 51 (2); *ibid.*, 821.

(*t*) *Ibid.*, s. 10 (1); *ibid.*, 801.

(*u*) For definition of "absolute right of veto," see *ibid.*, s. 51 (1); *ibid.*, 821.

(*a*) *Ibid.*, s. 10 (1) (*a*); *ibid.*, 801.

(*b*) *Ibid.*, s. 10 (1) (*b*); *ibid.*, 801.

The Board may not supply electricity directly to persons not being authorised undertakers, except (i.) to owners of selected stations, to the extent to which they are entitled to demand a supply under the Act; (ii.) to any company, body, or person for power purposes, in any area not forming part of the area of supply of any authorised undertakers. For such last-mentioned supply, the consent of the Electricity Commissioners is required (e).

The Electricity Commissioners may authorise the Board to impose such terms and conditions on the giving of a supply as the Commissioners may think fit, where the outlay incurred in providing the necessary main transmission lines would entail unreasonable expense, having regard to the supply required (d).

Where authorised undertakers owning a generating station, other than a selected station, demand a supply from the Board, the Board may (subject to certain conditions as to the cost of their supply) insist that the undertakers shall take the whole quantity of electricity required for their undertaking, directly or indirectly, from the Board (e).

In the period before the completion of the work specified in a scheme for an area, the Board may arrange to give a supply to authorised undertakers in the area to whom they will be entitled on the completion of the scheme to give a direct supply, of such amount and on such terms as may be agreed (f). [30]

(b) *Tariff*.—The price to be charged by the Board for electricity supplied directly to authorised undertakers is to be in accordance with a tariff, to be fixed by the Board from time to time; and the tariff is to be fixed so that over a term of years (to be approved by the Electricity Commissioners) the receipts on income account shall be sufficient to cover the expenditure on income account, including interest and sinking fund charges, with such margin as the Commissioners may allow (g). This tariff may be different for different areas (h).

The tariff is to be framed so as to include and show separately (1) a fixed kilowatt charges component and (2) a running charges component in accordance with principles approved by the Electricity Commissioners; or the Commissioners may by order determine some other manner of framing the tariff (i). [31]

(c) *Price of Indirect Supply in Bulk*.—Authorised undertakers giving a supply to other authorised undertakers in bulk, or to a railway company for haulage or traction purposes, and having themselves received a supply directly or indirectly from the Board, are to charge on the same terms as those upon which they themselves receive the supply from the Board, together with such charges and allowances for any transmission line used for the purpose of the supply, as are mentioned in the Third Schedule to the Act (k). Any question arising as to the amount is to be determined by the Electricity Commissioners. The price charged for any supply of electricity given in pursuance of a contract made before the passing of the Act is not to be affected (l).

A supply is received indirectly from the Board, when it is received

(c) Electricity (Supply) Act, 1926, s. 20 (3); 7 Statutes 807.

(d) *Ibid.*, s. 10 (2); *ibid.*, 801.

(e) *Ibid.*, s. 10 (3); *ibid.*

(f) *Ibid.*, s. 10 (4); *ibid.*, 802.

(g) *Ibid.*, s. 11 (1); *ibid.*, 802.

(h) *Ibid.*, s. 11 (3); *ibid.*, 803.

(i) *Ibid.*, s. 11 (2); *ibid.*

(k) See also the Scale of Depreciation (Transmission Line Allowance) Special Order, 1931 (S.R. & O., 1931, No. 700).

(l) Electricity (Supply) Act, 1926, s. 12; 7 Statutes 803.

from authorised undertakers who themselves receive a supply from the Board (*m*). [32]

Power of Electricity Commissioners to Close Generating Stations.—Under certain circumstances, the Electricity Commissioners may make an order requiring authorised undertakers to take a supply from the Board and to close down their generating station (other than a selected station). Before this can be done, the Board must (i.) notify the undertakers that they are in a position to supply the requirements of the undertakers; (ii.) undertake to give such supply for not less than seven years on specified terms, ascertained in accordance with the Act; (iii.) be satisfied that the cost, on those terms, is below the prevailing cost to the undertakers of generating electricity at their station. Then if the undertakers refuse, or fail to agree, within three months, to take a supply directly or indirectly from the Board, and the Electricity Commissioners are satisfied, as respects the next subsequent year, that the cost of production at the station for that year substantially exceeded what the undertakers would have paid the Board, the Commissioners may by order require the undertakers, in a time not less than six months from the date of the order, to shut down their station as a generating station, and take a supply in bulk from the Board (*n*). [33]

Provision is made for arbitration by an arbitrator appointed from the panel of arbitrators on the question whether the cost of production of electricity substantially exceeded what would have been the cost of its purchase from the Board (*o*); and in calculating the costs of production, no account is to be taken of capital charges in respect of capital expended on the station (*p*). [34]

Power of Authorised Undertakers to carry out Arrangements.—Where the Board are authorised or required to enter into arrangements with authorised undertakers for any purpose, those undertakers may carry out such arrangements, notwithstanding anything in any special Act, order, or other instrument regulating their powers (*q*). Such arrangements are purposes for which a local authority or joint electricity authority may borrow under the Electricity (Supply) Acts, 1882 to 1922 (*r*); and company undertakers, unable to raise the necessary capital without an Act of Parliament, may do so by means of a scheme approved by the High Court (*s*). [35]

Contracts affecting Transferred Property.—Where contracts are in force for the construction, extension or repair of a generating station or main transmission line acquired under the Act, the rights and liabilities of the former owners thereunder are transferred to the acquiring authority (*t*). [36]

Distribution Plant at Transferred Generating Station.—Where a generating station contains plant that forms an essential part of the distribution system of the owners, that plant remains the property of the former owners when the station is acquired under the Act, and the

(*m*) Electricity (Supply) Act, 1926, s. 51 (2); 7 Statutes 821.

(*n*) *Ibid.*, s. 14 (1); *ibid.*, 804.

(*o*) *Ibid.*, s. 14 (2); *ibid.*

(*p*) *Ibid.*, s. 14 (3); *ibid.*

(*q*) *Ibid.*, s. 16 (1); *ibid.*, 805.

(*r*) 7 Statutes 686—792.

(*s*) Electricity (Supply) Act, 1926, s. 16 (2), (3); 7 Statutes 805.

(*t*) *Ibid.*, s. 17 (1); *ibid.*

owners retain right of access so long as electricity is supplied from the station for distribution (u). [37]

Consents.—Nothing in the Act is to relieve the Board or any authorised undertakers or other persons concerned from the necessity of obtaining any consent or approval of the Minister of Transport or the Electricity Commissioners (a) that would be otherwise necessary under the Electricity (Supply) Acts, 1882 to 1922 (b). The Minister or the Commissioners, in determining whether to give or withhold consent or approval, are to have regard to the provisions of the Act, and the effect of any scheme or proposed scheme thereunder (c). [38]

Board as Undertakers.—The Board are to be deemed to be undertakers and authorised undertakers within the meaning of the Electricity (Supply) Acts, 1882 to 1922 (b) : and the Act of 1926, in relation to the Board, to be a special Act for the purposes of those Acts ; but sect. 13 of the Electric Lighting Act, 1882 (d), and sects. 2 and 3 of the Electric Lighting Act, 1888 (e), are not to apply to the undertaking of the Board (f). These exceptions relieve the Board of the necessity, imposed by sect. 13 of the Act of 1882, of obtaining the consent of the authority, company or person by whom a street not repairable by the local authority, or a railway or tramway, is repairable (or the consent of the Electricity Commissioners) before the Board break up the street, railway or tramway ; and of being subject to a power of purchase of their undertaking by local authorities.

For the purposes of sect. 20 of the Act of 1926, the Schedule to the Electric Lighting (Clauses) Act, 1899, is incorporated with that Act, subject to such exceptions and modifications as may be prescribed by regulations made by the Electricity Commissioners (g). The Schedule, as so modified, thus applies to the Board in their capacity of undertakers. Sect. 20 of the Schedule in its application to the Board is amended by sect. 20 (1) of the Act of 1926, so that the protection thereby afforded to lines used for electric signalling communication is extended to lines used for electrical control of railways. [39]

Acquisition of Land (h).—The Board may acquire by agreement or may be authorised to acquire compulsorily land and easements, servitudes and other rights in and over land for the purpose of any of their powers and duties under the Act, including the construction of main transmission lines, in like manner as a local authority, being authorised undertakers, may acquire, or be authorised to acquire, land under the Electricity (Supply) Acts, 1882 to 1922, for the purpose of a generating station. These powers are not affected by Part VII. of the L.G.A., 1933 (see sect. 179 (g) and the Seventh Schedule to that Act). A local authority, company or person may be authorised by a special order of the Electricity Commissioners, confirmed by the Minister of Transport and Parliament,

(u) Electricity (Supply) Act, 1926, s. 17 (2) ; 7 Statutes 806.

(a) *Ibid.*, s. 18 (1) ; *ibid.*

(b) 7 Statutes 686—702.

(c) Electricity (Supply) Act, 1926, s. 18 (2) ; *ibid.*, 806.

(d) 7 Statutes 693.

(e) *Ibid.*, 702, 703.

(f) Electricity (Supply) Act, 1926, s. 20 (1) ; 7 Statutes 806.

(g) See the Electric Lighting (Clauses) Act, 1899 (Application to Central Electricity Board) Regulations, 1927 (S.R. & O., 1927, No. 1144).

(h) Electricity (Supply) Act, 1926, s. 21 ; 7 Statutes 807.

and made under sect. 1 of the Electric Lighting Act, 1909 (*i*), to acquire land compulsorily for a generating station.

But the compulsory acquisition of land, or a right in or over land, for the purposes of a main transmission line cannot be authorised unless the objects sought cannot consistently with efficiency and economy be attained by the acquisition of a wayleave under sect. 22 of the Electricity (Supply) Act, 1919 (*k*). Nor can the Board be authorised by special order to acquire compulsorily land held for the purpose of a railway, canal, inland navigation, dock or harbour undertaking. [40]

The Board are to be deemed to be a public authority for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919 (*l*). The Lands Clauses Acts are applied to the acquisition of land by electricity undertakers by sect. 12 of the Electric Lighting Act, 1882 (*m*), and sect. 1 of the Electric Lighting Act, 1909 (*n*). [41]

Borrowing Powers.—These are to be exercised by the Board with the consent of the Electricity Commissioners and subject to regulations to be made by the Minister of Transport with the consent of the Treasury. A limit of £33,500,000 was imposed by Special Orders dated May 24, 1930, and December 22, 1933, which has been increased to £60,000,000 (*o*). [42]

Surplus Electricity and Energy.—The Board may purchase surplus electricity produced by the utilisation of water power, waste heat or otherwise, from any local authority, company or person producing it. The necessary powers for conveying the electricity may be obtained by an order of the Electricity Commissioners (*p*). The Board may enter into arrangements with any local authority, company or person for the taking or giving of a supply of any form of energy other than electricity, in like manner as a joint electricity authority under sect. 15 (2) of the Act of 1919 (*q*). [43]

Protection of County Bridges.—Special protection is afforded to county bridges by sect. 35 of the Act (*r*). Nothing in the Act is to limit or affect the powers of a county council to rebuild, alter, widen or repair any bridge upon which a work authorised by the Act is constructed; and the Board are at their own expense to make temporary arrangements for the carrying of their cables across such a bridge during alterations where the county council consider such arrangements necessary in order to avoid interruption to the supply (*s*). [44]

Compensation for Deprivation of Employment.—Officers and servants of authorised undertakers affected by the closing or acquisition of, or by restrictions imposed by the Board on the working or use of, a generating station, or by the acquisition of a generating station or main transmission line, under or in consequence of the Electricity (Supply) Act,

(*i*) 7 Statutes 744. Special orders were substituted for provisional orders by s. 26 of the Electricity (Supply) Act, 1919; 7 Statutes 772.

(*k*) 7 Statutes 763.

(*l*) Electricity (Supply) Act, 1926, s. 21 (1); 7 Statutes 807. For the Acquisition of Land (Assessment of Compensation) Act, 1919, see 2 Statutes 1176.

(*m*) 7 Statutes 692.

(*n*) *Ibid.*, 744.

(*o*) Electricity (Supply) Act, 1926, s. 27; 7 Statutes 809.

(*p*) *Ibid.*, s. 23 (1); *ibid.*, 808.

(*q*) *Ibid.*, s. 23 (2). For s. 15 (2) of the Act of 1919, see 7 Statutes 763.

(*r*) 7 Statutes 814.

(*s*) Electricity (Supply) Act, 1926, s. 35; 7 Statutes 814.

1926, may be entitled to compensation (*t*). The officer or servant must prove, within five years of the closing, restriction or acquisition, either (i.) that he has suffered loss of employment or diminution of salary or emoluments otherwise than on grounds of misconduct, incapacity or superannuation ; or (ii.) that he has relinquished his employment in consequence of being required to perform duties not analogous, or an unreasonable addition, to those which he has been previously required to perform ; or (iii.) that he has been placed in any worse position in respect to the conditions of his service (including tenure of office, remuneration, sick or other fund, or any benefits or allowances, whether obtaining legally or by customary practice) (*u*). He will, however, have no claim if it can be shown that equivalent employment was available to him on like conditions to those obtaining previously.

The compensation must be determined by a referee or board of referees appointed by the Minister of Labour, and is to be paid by the authorised undertakers owning the station, or (where a station or main transmission line is acquired) the acquiring authority. In the case of an officer employed on an annual salary, the compensation is to be based on, but not to exceed, the amount which would have been payable to a person on abolition of office under the Acts and rules relating to the Civil Service in force at the passing of the L.G.A., 1888 ; and in such a case service under any authorised undertakers, and war service, is to be reckoned in computing the period of service (*a*).

Any question whether the generating station has been closed, or whether any restriction on the working or use of a station has been imposed, under or in consequence of the Act, is to be determined by the Electricity Commissioners (*a*). [45]

London.—See title ELECTRICITY SUPPLY.

(*t*) Electricity (Supply) Act, 1926, s. 15 and Fourth Schedule ; 7 Statutes 805, 824.

(*u*) *Ibid.*, Fourth Schedule ; *ibid.*, 824.

(*a*) *Ibid.*, s. 15 and Fourth Schedule ; *ibid.*, 805, 824.

CENTRAL MIDWIVES' BOARD

See MIDWIVES.

CENTRAL VALUATION COMMITTEE

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See also title RATES AND RATING in which will be found a full list of the titles dealing with this subject.

I.—GENERAL

Constitution.—The Central Valuation Committee (a) was constituted under sect. 57 of the R. & V.A., 1925 (b), and in accordance with a scheme made by the Minister of Health (c). [46]

As provided by the scheme, the committee consists of 32 members, 24 of whom must be representatives of local authorities, appointed as follows :

- by the County Councils Association, 7 members of county valuation committees, two of whom must be members also of rating authorities ;
- by the Association of Municipal Corporations, 8 members, four at least to be members of rating authorities and four at least members of assessment committees ;
- by the Urban District Councils Association, 2 members, one at least to be a member of a rating authority, and one at least a member of an assessment committee ;
- by the Rural District Councils Association, 2 members, one at least to be a member of a rating authority and one at least a member of an assessment committee ;
- by the Association of Poor Law Unions (d), 5 members of assessment committees.

The remaining eight members are appointed by the Minister at his discretion, but three at least are to be officers of rating authorities or assessment committees. The L.C.C., the City Corpn., and the metropolitan borough councils and assessment committees are not represented on the Central Valuation Committee. The members are

(a) The offices of the committee are at New Public Offices (M. of H. entrance), Parliament Street, London, S.W.1 ; and the Chairman is Sir Edward J. Holland, D.L., J.P. ; the Vice-Chairman is Sir James Curtis, K.B.E., J.P. ; the Secretary is F. J. Ogden, M.B.E.

(b) 14 Statutes 678.

(c) The Central Valuation Committee (Constitution) Scheme, 1926 (S.R. & O., 1926, No. 1019).

(d) As poor law unions were abolished on April 1, 1930, by the L.G.A., 1929, s. 1, it would appear that the power of the Association of Poor Law Unions to appoint members of the committee is in abeyance, though five members so appointed are members of the committee.

appointed normally for five years, but it was provided that of the members first appointed one-half should retire on January 1, 1929, and the other half on January 1, 1931, and thereafter every fifth year.

The Associations represented on the committee and the Minister were to determine which of the members appointed by them were to retire in 1929. The numbers of representatives of each Association, and of those appointed by the Minister, to retire, are specified in the scheme (e).

Any vacancy is to be filled as soon as possible by the Association or by the Minister, as the case may be, and the person appointed to fill the vacancy holds office to the date on which the member in whose place he is appointed would in the ordinary course have retired.

Retiring members are eligible for reappointment if otherwise qualified. [47]

Meetings.—The chairman and vice-chairman are appointed by the committee.

At the meetings of the committee the chairman or acting chairman has a second or casting vote. The quorum, the proceedings and the place of meeting may be such as the committee determine. [48]

Officers.—The committee may make such arrangements for secretarial and other assistance as they may deem necessary. [49]

Expenses.—For the purpose of meeting their expenses the committee may invite rating authorities, county valuation committees, or assessment committees to make contributions in accordance with a scale to be approved by the Minister, and it is lawful for them to contribute in accordance with such scale without any further sanction (f). [50]

Powers.—The committee are an advisory body and have no compulsory powers. It was contemplated that they should depend upon goodwill and persuasion in conference to carry into effect any policy which they advocated (g). But the committee are empowered by, and it is their duty under, the Constitution Scheme of 1926 to call for such information as they deem material from rating authorities, assessment committees, and county valuation committees; to consult persons of experience in the law and practice of valuation; and to convene conferences, or arrange with county valuation committees for the convening of conferences, for the discussion of questions relating to valuation (h). [51]

Functions.—In sect. 57 of the R. & V.A., 1925 (i), the purpose of the committee is described as the promotion of uniformity in valuation. In the Scheme made by the Minister, this description is paraphrased as the promotion of uniformity in the principles and practice of valuation throughout England and Wales (k). Sect. 57 (2) of the Act (l) directs the committee to make representations to the Minister for promoting uniformity and removing inequalities in the system of valuation.

The chairman of the committee has drawn attention to an existing misapprehension of the intended meaning of the word "uniformity" used in the Act, and has alluded to a tendency to read the term as meaning that properties of the same kind, wherever found, are to be

(e) Constitution Scheme of 1926, para. 5 (2).

(f) *Ibid.*, para. 8, and R. & V.A., 1925, s. 57 (3); 14 Statutes 679.

(g) The Minister's Address to the Central Valuation Committee, Circular 741, November 2, 1926; Revised Series of Resolutions, pp. 114—116.

(h) Para. 3.

(k) Constitution Scheme of 1926, para. 8.

(l) 14 Statutes 679.

(i) 14 Statutes 678.

valued at the same amount, which obviously is not the true interpretation (*m*). He pointed out that properties of the same kind, owing to differences of situation and general amenities, are often not of the same letting value, and cannot be assessed for rating purposes at a uniform amount. [52]

The committee in their first series of representations emphasised this by advising that it is absolutely essential that every rating authority and assessment committee throughout their work in the preparation and revision of a valuation list should constantly keep in mind, and put into practice, the chief principle of the law of valuation as embodied in the definition of "gross value" (*n*), which in their view may be summarised as meaning the rent at which a hereditament might reasonably be expected to be let if the tenant undertook to pay the rates, and the owner to bear the cost of repairs (*o*). [53]

In resolution 13, in which the committee recommended that if properties are alike, but are let at different rents, the normal rent paid should be taken as the basis of assessment, they are careful to make plain that they are referring to similar properties in the same locality (*e.g.* rows of similar houses), and to properties only which are alike as to accommodation and amenities. That is to say, to properties for which tenants would reasonably be expected to pay the same rents. [54]

The committee are given a wide discretion in the procedure to be adopted in bringing about uniformity. Their first duty, however, is to take into consideration the operation of the R. & V.A., 1925, and to give the Minister such information and make such representations to him, with relation to the Act, as they consider desirable for promoting uniformity. For that purpose they are to take all such steps as may appear to them to be useful or expedient (*p*).

In particular, they are to consider the operation of the Act and questions connected with the powers and duties which it imposes upon rating authorities, assessment committees, and county valuation committees (*q*). They are to ascertain by consultation with persons of experience in the law and practice of valuation, if there are any points with respect to which the practice is not uniform or leads to inequalities in the system of valuation or with respect to which amendments of the law may appear to be desirable (*r*); and to convene conferences, or to arrange with county valuation committees for the convening of conferences, for the discussion of questions relating to the valuation of hereditaments in general or hereditaments of particular classes, with a view to the formulation of principles for the assistance or guidance of rating authorities and other bodies (*s*). [55]

The committee are from time to time to inform the Minister on these points and to bring to his notice any conclusions at which they have arrived or recommendations made by them, or at conferences, and to make representations to him as they may think fit (*t*). Finally they are to submit to the Minister an annual report of their proceedings for each year ending on March 31 with a statement of their receipts and payments. [56]

(*m*) Address to Rating and Valuation Officers.

(*n*) R. & V.A., 1925, s. 68; 14 Statutes 686.

(*o*) Resolution 3, Revised Series, p. 1.

(*p*) See Scheme of 1926, para. 3, and s. 57 (2) of R. & V.A., 1925; 14 Statutes 679.

(*q*) *Ibid.*, para. 3 (a).

(*r*) *Ibid.*, para. 3 (c).

(*s*) *Ibid.*, para. 3 (d).

(*t*) *Ibid.*, para. 3 (e).

The committee, in the system set up under the Act to secure efficiency and uniformity in the procedure of valuation, are placed in an intermediate position between the Minister and the local authorities. First the rating authority prepare the draft valuation list. The assessment committee then see that the list is satisfactory; that the lists of the various rating authorities in their area are on uniform lines, and that the values appearing in the lists are fair and equal in relation to each other. The county valuation committee are responsible for the co-ordination of the work of the rating authorities and the assessment committees in the county. Finally the central valuation committee are charged with the duty of formulating principles for the assistance and guidance of rating authorities, assessment committees and county valuation committees throughout England and Wales and of reporting to the Minister on the general working of the Act (u). [57]

Relations with Local Authorities. (a) *Rating Authorities.*—The committee are to consider the operation of the Act as it affects rating authorities, and questions connected with the powers and duties under the Act of the rating authorities, and they are to call upon rating authorities for such information as they may deem to be material. They are to convene, or to arrange with the county valuation committee for convening, conferences, so that principles may be formulated for the assistance or guidance of the rating authorities, and from time to time to inform the Minister of any conclusions arrived at or recommendations made (a). [58]

(b) *Assessment Committees.*—As with rating authorities, it is the duty of the central valuation committee to consider the operation of the Act, and the duties and powers under it of the assessment committees. They are to obtain from assessment committees such information as they require, and convene or arrange for conferences relating to the valuation of hereditaments in general, or hereditaments of a particular class, with a view more particularly to the formulation of principles for the assistance or guidance of assessment committees; and to advise the Minister of the conclusions arrived at (a).

Assessment committees are allowed to pay travelling and subsistence expenses to members attending conferences held by county valuation committees (b).

The assessment committees are required, in April of each year, to send to the central valuation committee a report of their proceedings (c). [59]

(c) *County Valuation Committees.*—Para. 3 of the Central Valuation Committee (Constitution) Scheme, 1926 (d), applies to county valuation committees as well as rating authorities and assessment committees. The central valuation committee may arrange with a county valuation committee or committees for the holding of conferences on questions relating to valuation for the assistance or guidance of the various authorities in the performance of their duties (e), and the county valuation committee may pay the expenses of their members in attending such conferences (f). [60]

(u) See Scheme of 1926, para. 3 (f).

(a) *Ibid.*, para. 3.

(b) R. & V.A., 1925, s. 53 (2); 14 Statutes 676.

(c) *Ibid.*, Sched. I. (7); *ibid.*, 691. The Assessment Committees (Form of Annual Report) Rules, 1933 (S.R. & O., 1933, No. 88).

(d) S.R. & O., 1926, No. 1019.

(e) Scheme of 1926, para. 3 (d).

(f) R. & V.A., 1925, ss. 18 (2), 53 (2); 14 Statutes 643, 676.

Consideration of Resolutions of the Central Valuation Committee by County Conferences and Otherwise.—The central valuation committee in resolution No. 32 urge county valuation committees (in co-operation, where practicable, with county borough councils) to take steps by holding conferences, in the manner provided for in sect. 18 (2) of the R. & V.A., 1925 (*g*), to facilitate the consideration and application by rating authorities and assessment committees of resolutions, and in resolution No. 33 say that they would welcome any suggestions, intended to promote uniformity of valuation, forwarded to them through a county valuation committee (*h*). [61]

II. RECOMMENDATIONS OF THE CENTRAL VALUATION COMMITTEE

The committee have so far submitted to the M. of H. eight series of resolutions, which have been published in a consolidated and amended edition in 1934 and are referred to in this article as the Revised Series. The resolutions are for the most part in the form of recommendations on the application of the principles of valuation for rating purposes, and have for their object the bringing about of uniformity in procedure and practice throughout England and Wales.

The resolutions as issued are numbered consecutively, but in the Revised Series for convenience are grouped, so as to bring together resolutions dealing with the same subject-matter in the following order: First (A) the resolutions which relate to principles and practice; then (B) those relating to particular types of hereditaments; and at the end (C) those relating to various miscellaneous questions. It will be seen that a great variety of practical points has been considered by the committee.

The resolutions omitted from the Revised Series the committee state are those which were temporary in character and are no longer effective, or resolutions which have been superseded by fresh legislation or by later resolutions of the committee.

The purport of each resolution is indicated in the following summary. The number indicated is that of the resolution of the committee. [61A]

A. Principles and Practice.

(a) *Principle of the Law of Valuation; Gross Value.*

No. 3. That every rating authority and assessment committee should constantly keep in mind, and put into practice, the chief principle of the law of valuation, which is embodied in the definition of "gross value in sect. 68 of the Act" (*i*).

No. 4. That the definition of "gross value" means that all properties valued for rating purposes must be valued upon the basis of their value *at the time of assessment*.

(b) *Level or Standard of Rental Value.*

No. 5. That the level or standard of rental value for each class of property will best be ascertained after consideration of the returns which rating authorities are empowered to obtain from the occupier, owner or lessee of *every* hereditament (*j*).

No. 6. That, in fixing assessments, excessive purchase prices paid and excessive rentals should be disregarded.

No. 7. That in the same way rents which have not been raised to the general level prevailing should be ignored.

(*g*) 14 Statutes 643.

(*h*) Resolution 33, Revised Series, p. 74.

(*i*) 14 Statutes 687.

(*j*) See, however, the R. & V. (No. 2) Act, 1932 (25 Statutes 533), and comments of the committee on Resolution 5, Revised Series, pp. 2, 3, and paras. 15—17, p. 89.

No. 8. That where rents of properties have not been increased to an amount which a tenant might reasonably be expected to pay, the rating authority should not assess such properties at an amount lower than neighbouring properties of the same kind. [62]

(c) *Properties let on Weekly or Monthly Tenancies at Rents which include Rates.*

No 9. That where the rent includes usual tenant's rates, an appropriate deduction should be made of the rates (including water rates), in arriving at the gross value, and the use of tables for the purpose is recommended.

No. 40. That in calculating the gross value on properties let on weekly or monthly tenancies at rents which include rates, no deduction should be made for the cost of collection (cf. *Smith v. Birmingham Churchwardens and Overseers (k)*). [63]

(d) *Properties held on Agreements or Leases for a Comparatively Short Term. Gross Value.*

No. 10. That (apart from specified exceptions) :

(i.) where the landlord does all repairs the rent should be taken as representing the gross value ;

(ii.) where the tenant does internal repairs, the rent *plus* 5 per cent., and where the tenant does all repairs, the rent *plus* 10 per cent. should be taken as representing the gross value.

No. 11. That in the case of all other agreements or leases for a comparatively short term, the rent under the lease should be reviewed in order to arrive at the gross value, and regard should be had to the facts and conditions named. [64]

(e) *Freeholds and Long Leaseholds.*

No. 12. That where property is the freehold of the occupier or is held by him on long lease, the rent which a yearly tenant might reasonably be expected to pay (regard being had to rents paid for similar properties actually let on yearly tenancies) should be taken as the gross value.

If the property is of a kind rarely let from year to year, and there are no comparable rents paid in the district, recourse may be had to interest on effective capital value as *prima facie* evidence of what rent a tenant may reasonably be expected to pay (l). [65]

(f) *Similar Properties in the same Locality (e.g. Rows of Similar Houses).*

No. 13. That if such properties are alike but are let at different rents, the normal rent in the locality should be taken as the basis of assessment. [66]

(g) *Flats, Chambers, etc., let at Rentals which include Cost of Services.*

No. 14.—That the cost of services to be deducted in arriving at the gross value should be determined according to the merits of each case. [67]

(h) *Self-contained flats.*

No. 15. That each flat structurally adapted for separate occupation, or self-contained, should be separately assessed. [68]

(k) (1889), 22 Q. B. D. 703 ; 38 Digest 523, 719.

(l) And see comment on Resolutions 10, 11, 12 in Revised Series, p. 6.

(i) *Buildings occupied in Parts.*

No. 16. That the provisions of sect. 23 of the R. & V.A., 1925 (m), should be carefully observed.

No. 72. The committee here set out the conditions in which a building occupied in parts may be treated for valuation purposes as a single hereditament (n). [69]

(j) *Properties in Respect of which Sewers or other similar Rates are Payable by the Owner, as Owner.*

No. 19. The average amount of such charges should not be excluded from the gross value, but should be deducted from the gross in arriving at the net annual value, after the appropriate percentage deduction has been made (o). [70]

(k) *Properties the Net Annual Value of which includes, or is, a Fraction of a Pound.*

No. 36. Where the net annual value is the same as the rateable value, the net annual value column should be left blank and the rateable value should be entered at the nearest complete pound.

Where the net annual value is *not* the same as the rateable value, the net annual value should be the exact unadjusted value, and the rateable value should be entered to the nearest pound.

Where the gross value is so low that the rateable value is ten shillings or less no entry should be made in the rateable value column. [71]

(l) *Properties the Gross Value of which includes, or is, a Fraction of a Pound.*

No. 37. That sect. 22 of the R. & V.A., 1925 (p), does not apply to gross value, and where the true gross value includes a fraction of a pound it would be improper to increase or reduce that amount to the nearest pound. [72]

(m) *Garages within the Curtilage of Dwelling-houses.*

No. 65. Where such a garage is occupied by the occupier of the house, the assessment on the house should include the garage, and the same where the garage is not beneficially occupied by any one. Where the garage is separately let, there should normally be a separate assessment.

Where the house is unoccupied but the garage is occupied, the garage should normally be assessed separately. Procedure in arriving at the value is suggested. [73]

(n) *Property Damaged by Mining Subsidence.*

No. 44. That it is a question of fact in each case whether damage due to subsidence affects the value of a house to a tenant. [74]

B. Particular Types of Hereditament. See also title RATING OF SPECIAL PROPERTIES.

(a) *Agricultural Properties.*

No. 76. Rescinds resolutions 17, 18, 42, 43 and 59, and substitutes resolutions 77, 78, 79 (q). [75]

(m) 14 Statutes 649.

(n) For method of valuation, see Revised Series, Resolution 74, p. 9.

(o) And see Revised Series, pp. 10, 22 (Sewers Rate on Farm).

(p) 14 Statutes 646.

(q) Revised Series, pp. 18—24; and see Resolution 84 (Woodlands), p. 72.

(b) *Licensed Premises.*

No. 20. That the rating authority should, on the form sent out under sect. 40 of the R. & V.A., 1925 (*r*), ask for information as to the volume of trade done, and, in estimating the value, should have regard not only to the trade done but to the capacity (or facility) for trade (*s*).

No. 61. That it cannot be laid down with certainty that information with regard to trade done can be compulsorily required *under penalties*. The brewers or occupiers should be requested, in a document separate from the form issued under sect. 40, to supply particulars of goods sold in the previous two (or three) years (*t*).

No. 21. That the assessment of licensed premises should be referred to professional valuers, who should maintain co-operation through the medium of the county or county borough valuer.

[76]

(c) *Theatres, Music Halls and Picture Palaces.*

No. 22. That, if no satisfactory evidence of rental value exists, these and other similar properties should be referred to a professional valuer. [77]

(d) *Advertising Stations.*

No. 23. That all advertising stations of whatever kind (including illuminated signs) should be assessed in accordance with the provisions of the Advertising Stations (Rating) Act, 1889 (*u*), and the decisions of the Courts on that Act.

No. 53. Amplifies the recommendation in resolution No. 23 and advises a procedure for the valuation of advertising stations on agricultural land and generally (*a*). [78]

(e) *Revenue-producing Undertakings.*

No. 24. These should be referred to a professional valuer. [79]

(f) *Non-productive Properties in the Occupation of Local Authorities.*

No. 25. Conferences of local authorities should be held to agree on a uniform basis of assessment for these properties. In the opinion of the committee occupation by a local authority does not, by itself, justify a standard of valuation different from that which would be applied if the property were otherwise occupied. [80]

(g) *Mills, Manufactories, Mines and Industrial Premises.*

No. 26. These should be referred to a professional valuer. [81]

(h) *Hereditaments which Extend into several Rating Areas.*

No. 38. That resolutions 28 and 32 (*b*) should be observed, and that valuers should agree upon a common basis of valuation and apportionment. [82]

(i) *Sporting Rights.*

Nos. 39 and 60. Superseded by later resolution, consequent upon the derating of agricultural land and decisions of the High Court (*c*). [83]

(*r*) 14 Statutes 668.

(*s*) See comment by the committee on Resolution 20, Revised Series, p. 85; and Memo. on the Rating of Licensed Premises, pp. 102—111.

(*t*) See Appendix D, Fourth Series, p. 49; and Revised Series, p. 111.

(*u*) 14 Statutes 597.

(*a*) And see Revised Series, Resolution 75, pp. 16, 17.

(*b*) See *post*, p. 27; and see Resolution 68, *post*, p. 26.

(*c*) See Revised Series, Resolution 83, pp. 59—63.

(j) "*Tied*" *Farm Cottages*.

No. 42. That where cottages are comprised in a farm and are occupied by agricultural workers who are required under the terms of their employment to reside in the cottages, such "tied" farm cottages should be valued on the rent at which they would be expected to let from year to year if they could only be used for the cultivation of the land (*d*). [84]

(k) No. 43. *Tithe Rentcharge on Farm Houses and Farm Cottages* (*e*). [85](l) *Land covered with Water*.

No. 45. That where land covered with water is comprised in a larger hereditament, it should, unless it is of no appreciable value, be regarded as a separate hereditament. [86]

(m) *Government Property*.

No. 47. The rating authorities should ask the Treasury to direct the Treasury Valuer to carry out a revaluation of all properties in the occupation of the Government. Rates on telephone and telegraph wires, and on sub-post offices are referred to (*f*). [87]

(n) *Poultry Farms*.

No. 48. That it seems to the committee that the keeping of poultry on land is an agricultural operation thereon (*g*). [88]

(o) *Coal Mines*.

No. 50. The committee adopts the report of the panel of experts and recommends the method of valuation indicated in the report for the purpose of ascertaining the rateable value (*h*). [89]

(p) *Underground Sewers*.

No. 51. All underground sewers should be rated (*i*). [90]

(q) *Petrol Tanks and Pumps*.

No. 52. Petrol tanks with their pumps and other accessories should be treated as part of the hereditament in connection with which they are established (*j*). [91]

(r) *Hospitals, Charitable Institutions, Village Halls, Institutes and Clubs*.

No. 54. Rating and assessment authorities should endeavour by conferences to arrive at a basis for the assessment of properties of these classes, and recommendations are set out for their assistance (*k*). [92]

(s) *Recreation Grounds not Dedicated to the Public*.

No. 55. Land kept or preserved mainly or exclusively for

(*d*) And see Revised Series, pp. 17—24, in which this resolution and No. 43 were rescinded.

(*e*) See Revised Series, Resolution 78, p. 22; and see *supra*, note (*d*).

(*f*) And see Memo. on Valuation of Government Property, Revised Series, pp. 95—101.

(*g*) See Buildings used for the Rearing of Poultry, Revised Series, Resolution 82, pp. 55, 56.

(*h*) For "rateable value" in resolution, read "net annual value." See Revised Series, p. 38, footnote.

(*i*) And see Resolution 25 (*ante*, p. 24): cf. *West Kent Main Sewerage Board v. Dartford Union*, [1911] A. C. 171; 38 Digest, 440, 112.

(*j*) But see The Plant and Machinery (Valuation for Rating) Order (S.R. & O., 1927, No. 480), and see Fourth Series, p. 30.

(*k*) And see Revised Series, Resolution 80, p. 25 (Convalescent Homes).

purposes of sport or recreation should normally be assessed as non-agricultural, but where land which would otherwise be regarded as agricultural is occasionally used for those purposes, such occasional user should not be regarded as taking the land out of the category of agricultural land (l). [93]

(t) *Public Elementary and Secondary Schools.*

No. 56. The committee draw attention to observations (set out) on the existing law and practice and the suggested future practice, in the assessment of schools (m). [94]

(u) *Registered Clubs, Licensed.*

No. 57. In assessing licensed clubs, regard may be had to the demand in the district for such clubs, the suitability of the premises for the purpose and the facilities for the supply of liquor. The doubt whether regard may be had to the volume of liquor supplied should be removed by legislation (n). [95]

(aa) *Tithe Rentcharge.*

No. 58. Sets out the procedure in the assessment of tithe rentcharge, and the deductions permissible in arriving at the rateable value (o). [96]

(bb) *Mineral-Producing Hereditaments (other than Coal, Tin, Lead or Copper Mines).*

No. 63. The committee advise that a valuation based on output can be adopted in normal cases, and recommend principles (set out) which should be applied in arriving at the net annual value (p). [97]

(cc) *Valuation of Public Utility Undertakings ; Hereditaments which Extend into Several Rating Areas.*

No. 68. The committee advise closer co-operation among authorities concerned in the valuation of these undertakings, and recommend the procedure (set out) for adoption (q). [98]

(dd) *Premises used for Relaying Wireless Programmes.*

No. 69. Where the premises and wires are in the exclusive occupation of the operators, the central premises and the wires should be assessed together in the same manner and on the same principles as public utility undertakings. [99]

(ee) *Valuation of Water Undertakings provided under the P.H.A., 1875.*

No. 71. The committee state the principles on which valuations of such water undertakings should be made, and point out that the Courts have indicated that there may be special circumstances in which the application of some other method than that known as the profits method, may be justified ; and that for the reasons stated in para. 6 of the resolution, it may be found that such special circumstances exist in many, if not all, water undertakings

(l) And see Revised Series, pp. 50—55 on the valuation of playing fields.

(m) See Revised Series, pp. 57—59.

(n) And see Memo. on Registered Clubs, Revised Series, pp. 111—113.

(o) As to tithes on farm houses and farm cottages, see Revised Series, Resolution 78, p. 22.

(p) For the assessment of tin, lead and copper mines, see the Rating Act, 1874, s. 7 ; 14 Statutes 588.

(q) Revised Series, pp. 25—31.

provided under the P.H.A. by local authorities. The lines along which an alternative method may be found are indicated. [100]

(ff) *Rating of Glass Houses.*

See correspondence in Revised Series, pp. 31—33. [101]

(gg) *Valuation of Parsonage Houses.*

See Revised Series, pp. 47—50. [102]

C. Miscellaneous.

(a) *Employment of Professional Valuers.*

No. 27. All rating authorities with the assistance of efficient officers, should be able to arrive at a fair and reasonable valuation of the great bulk of the hereditaments in their areas without professional assistance, but some rating authorities are justified in maintaining a whole-time professional staff for the work of valuation. [103]

(b) *Valuation by Professional Valuers.*

No. 28. It is desirable that the valuation of all special properties should be made by, or under the supervision of, one professional valuer over as wide an area as possible. The committee advise the appointment of county valuers, and that rating authorities work in close co-operation with them (r). [104]

(c) *Copies of Schedule A Values.*

No. 29. Reminds the rating and assessment authorities that they are empowered to obtain a copy of the annual values of property in force for Schedule A and that such a copy should be obtained where needed. [105]

(d) *Carrying out of Resolutions.*

No. 30. The committee trust, so that progress may be made towards uniformity, that their recommendations and suggestions will be loyally observed by the local governing bodies, and remind county valuation committees of their rights under the Act. [106]

(e) *County Valuation Committees and Rating Authorities.*

No. 31. County valuation committees should encourage rating authorities freely to consult the county valuation office. [107]

(f) *County Conferences.*

No. 32. Advises the holding of conferences by the county valuation committee to consider the resolutions of the committee.

No. 33. Amplifies resolution 32. Recommends conferences at periodical intervals, and that county borough councils and assessment committees should co-operate with the county valuation committee. [107A]

(g) *Suggestions substituted by Local Authorities.*

No. 33. The committee welcomes suggestions from rating authorities and assessment committees, which should be forwarded through the county valuation committee. [107B]

(r) And see comments by committee on Resolutions 27, 28, Revised Series p. 79.

(h) *Proposals under sect. 37 of the R. & V.A., 1925 (s).*

No. 64. The committee consider that if a proposal is made for the increase of an assessment, the assessment committee may increase it; but if a proposal is made for reduction, they ought not to assume that they have power to increase the assessment. The form of proposal is discussed, and the respective duties of rating authorities and assessment committees, and the power of a county valuation committee to object to a proposal. [108]

(i) *Forms of Return under sect. 40 of the R. & V.A., 1925 (t).*

See Circulars to rating authorities, Revised Series, pp. 80—84. [109]

(k) *Memorandum on the Promotion of Uniformity in Valuation.*

See Revised Series, pp. 86—92. [110]

(l) *Assessment of Premises which have been Reconditioned or Improved.*

See Circular to local authorities, March 16, 1933; Revised Series, pp. 92—94. [111]

(m) *Recommendations of the Royal Commission on Licensing.*

Revised Series, p. 113. [112]

(n) *Report of the Address of the M. of H. at the First Meeting of the Committee.*

Revised Series, pp. 114—116. [112A]

(o) *Rescission of Resolutions.*

Nos. 81, 85, 86 rescinding resolutions 1, 2, 34, 35, 41, 62, 66, (Revised Series, pp. 47, 85). [112B]

London.—See p. 17, *ante*.

(s) 14 Statutes 664.

(t) *Ibid.*, 668.

CEREMONIES

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See also title : ARMS, COAT OF.

Ceremonial Arrangements.—Local custom and precedents will generally be found to be the most useful guides in arranging ceremonies. Where local custom differs in detail from any statement in this article, it will be advisable to inquire into the reasons. The Lord Chamberlain, and the officials of the H.O. and of the Herald's College are always helpful on matters of ceremony and precedence (a).

Royal Personages have in late years often expressed the wish that

(a) The following may usefully be consulted : Dodd's "Tables of Precedence." For order in which orders, decorations and medals should be worn, see the *London Gazette*, November 22, 1929. For dress and insignia, see "Dress and Insignia Worn at Court" (1929), published by Harrison & Sons, St. Martin's Lane, London, W.C.2. The Society of Town Clerks have information available on ceremonial on application to the Hon. Secretary, Town Hall, Wandsworth, London, S.W.18.

their visits should be regarded as informal. This affects the nature of the arrangements and the dress to be worn. The utmost care must be taken in inquiring from the private secretary, or other official, through whom the arrangements are made, that every detail, and especially the list of persons to be presented, in the order of precedence, will meet with the approval of the Royal Personage whose visit is anticipated. In the case of a loyal address, it is necessary to ascertain whether it will be received and to submit the actual wording of it for approval beforehand.

Arrangements for visits of distinguished visitors from the Dominions or from the Crown Colonies are made through the Dominions Office or Colonial Office as the case may be. Arrangements for visits of foreign royalties or other distinguished visitors are made through the Foreign Office. In some cases visitors from overseas are willing to accept hospitality, but there is no general statutory authority to expend money on their hotel bills. Such expenses may, however, be met by the mayor from his salary (b).

In ceremonies attended by representatives of the Armed Forces, and especially where there is a guard of honour or a procession, all details and especially matters of precedence should be arranged beforehand. Requests for permission to use troops, whether regulars or territorials for guards of honour, etc., should be addressed to the headquarters of the Army Command for the area (c).

In all ceremonies every detail of the arrangements should be worked out in advance and draft programmes discussed with all those who are co-operating. For the more important functions, a rehearsal is often desirable in order to verify the time-table of arrivals and departures. Seating accommodation should be arranged, giving due precedence to all proper claims and a seating plan of the hall or banquet should be issued, a numbered seat being allotted to each person. The provision of robing-rooms and ample cloakroom arrangements are important factors when working to a time-table. In the case of a parade or procession "markers" should be detailed for each section.

Particular care must be exercised before attending official functions in areas of other authorities. It should always be ascertained that the proper civic authorities of those areas have been invited. Arrangements should be made for the co-operation of the police of other areas on such occasions as official visits or processions passing through those areas and visits of personages who generally receive special personal police protection. [113]

Robes, Chains and Badges.—There is no power to defray from the local rate the cost of robes for members of the council, but certain borough councils bear the cost of providing and maintaining the town clerk's wig and gown. The type of robe and other badges of office worn by members is determined by local custom.

The cost of a chain or badge for the mayor or chairman cannot be charged to the rate (d). These are usually provided by gift or by local subscription. If a coat of arms is used in the design it should be in the form recorded at the College of Arms. See title ARMS, COAT OF

(b) As to the circumstances under which the mayor's salary may properly be increased for certain purposes, see *A.-G. v. Blackburn Corpn.* (1887), 57 L. T. 385; 33 Digest 85, 548; and *A.-G. v. Cardiff Corpn.*, [1894] 2 Ch. 337; 33 Digest 86, 558. See also title MAYOR.

(c) H.O. Circular 499,291, dated November 3, 1926. This Circular gives a list of the Commands and their respective areas.

(d) *A.-G. v. Bailey Corpn.* (1872), 26 L. T. 392; 33 Digest 71, 454.

Frequently a replica of the mayoral badge is provided for the deputy-mayor or chairman and for past mayors or chairmen. The cost should be defrayed privately. These badges should only be worn at civic functions (*dd*).

The wife of the mayor is not recognised as mayoress by statute. A mayoress is nominated by the mayor and is usually his wife or his daughter. A badge, provided privately, is usually worn by her when performing her duties. In some towns smaller badges are also provided for past mayoresses, but should only be worn at civic functions.

The deputy-mayor and the deputy of the town clerk should not wear the robes of the mayor and town clerk, although in some places the deputy-mayor wears the mayor's chain by local custom. [114]

Mace.—The mace is usually provided by gift or public subscription. It should precede the mayor when entering and leaving the council chamber, and should always repose in front of the mayor or other chairman when the council is sitting.

The mace should be carried in front of the mayor when he attends a civic or other important local function in his borough in his robes, or before the deputy-mayor when he is representing the mayor at such a function. The mace should not be taken with the mayor into another area except by special invitation.

In addition to the mayor's mace, some corpns. possess smaller maces formerly used by sheriffs, bailiffs, or serjeants of local courts. Bristol possesses a "city treasurer's mace." Certain cities also possess a civic sword (or swords) and cap of maintenance. The sword is usually carried in front of the mayor on ceremonial occasions (*e*). [115]

Flags.—If it is desired to pay respect to any person or to celebrate any particular day or event, the appropriate flag to fly on a town hall or council offices is the Union Jack (*f*). It is not correct to fly two flags from one flagstaff.

When His Majesty the King is present—and on no other occasion—the Royal Standard should be flown. It should not be broken on the flagstaff until His Majesty's actual arrival and it should be lowered from the flagstaff when His Majesty departs. [116]

Dress and Insignia Generally.—The following table sets out the dress and insignia generally worn on the occasions specified :

At special functions within the area when royalty is present.	Black morning or evening dress, robe, chain and badge. Court dress may be worn in London.
At a public official function connected with the business of the council, at which royalty is present.	Robe, chain and badge.
At the mayor's or chairman's own dinners and receptions.	Chain and badge. Robes may also be worn at receptions and, in London, court dress and robes are worn at receptions.
At public official functions within the area at which the mayor or chairman is present by invitation, and at which royalty is present.	Chain and badge. (Robes also if desired by the organisers of the function.)

(*dd*) The Office and Oath Act, 1867, s. 4, provided for corporate officers attending places of worship in the dress of their office with a view to relieving them of penalties or forfeitures for so doing.

(*e*) For more detailed information, see Jewitt and Hope's "Corporation Plate and Insignia of Office of the Corporate Towns of England and Wales."

(*f*) Proclamation dated January 1, 1801, reprinted in S.R. & O., revised, sub-title "Arms, Ensigns, Flags, etc."

At public official functions within the area at which the mayor or chairman is present by invitation.	Chain and badge.
At charity meetings, bazaars, etc., and other private functions within the area.	Badge only.
At any function outside the area at which royalty is present.	Chain and badge.
At any other public function outside the area.	Badge only.
At a lord mayor's annual banquet.	Evening dress (or court dress) and badge.
On presentation at His Majesty's levee.	Court dress, chain and badge, but not robes.

Orders, decorations, medals and miniatures should be worn in their usual places and underneath robes. Regulations issued from the Lord Chamberlain's office dated April, 1920, define the occasions (which include official dinners and receptions) when orders, miniatures and medals are worn with evening dress.

The mayoral chain and badge should never be worn with military or air force uniform or with the uniform of the lieutenantancy.

When taking the salutes at a march past, the mayor should remove and replace his hat as each section passes and salutes and when the colours pass. He should also remove his hat in the presence of Royal Personages. [117]

Precedence.—It is considered unnecessary to deal with matters included in the usual tables of precedence which are to be found in a number of well-known books of reference.

Subject to the Royal prerogative the mayor has precedence in all places in the borough (*g*). If the Lord Lieutenant has been specially deputed to represent the King, he has precedence over the mayor, but on other civic occasions he should yield precedence to the mayor; but where the mayor attends as a guest at a function which is not strictly civic in character, it is considered that he should not insist on his precedence (*h*). Similarly, at a private function, given in honour of a very important personage, *e.g.* a foreign ambassador, at which the mayor is a guest, it is not unusual for him, as an act of courtesy, to yield precedence. In London, the Lord Lieutenant and the Sheriff of the County of London have precedence over the metropolitan mayors, and the Lord Mayor of London is accorded precedence over all other mayors, except the mayor of the borough which he is visiting. At a funeral the mayor and corpn. should follow immediately behind the family mourners.

The mayor is entitled to precedence over other justices except a stipendiary magistrate engaged in administering justice. It is now clear that the mayor is entitled to have precedence and to preside at meetings of the licensing committee (*i*). The deputy mayor cannot represent the mayor as a justice.

(*g*) L.G.A., 1933, s. 18 (5); 26 Statutes 314; and see s. 302 (b); 26 Statutes 465, as to the vice-chancellors of the Universities of Oxford and Cambridge.

(*h*) The exact precedence of the Lord Lieutenant has not been authoritatively defined. Until the matter has been settled by the Crown, the above will serve as a general guide.

(*i*) S. 15 (5) and s. 155 (2) of the Municipal Corpn. Act, 1882, repealed by the L.G.A., 1933, amended the corresponding provisions in the Municipal Corpn. Act, 1835, s. 57 (2), as it had been held in *Ex parte Birmingham (Mayor)* (1860), 3 El. & El. 222; 33 Digest 285, 13, that the provisions of the 1835 Act referred to social, not magisterial precedence. S. 18 (5), (9) of the L.G.A., 1933, again amend the provisions relative to the mayor's precedence as a justice, and the report of the Chelmsford Committee (Cmd. 4272) at p. 68 states that the amendment recommended by them

The recorder takes precedence in all places within the borough next after the mayor and consequently precedes the town clerk (*k*). [118]

The following is an order commonly observed in civic processions and may be accepted as a guide, but there are numerous local variations.

Mounted police escort. Military. Police. Fire brigade.

(In a procession to a cathedral or church :—Wardens and sidesmen. Clergy).

Magistrates (juniors first). Under sheriff. Lord Lieutenant. Mace. Mayor. Recorder. County Court judge. Sheriff. Town clerk. Deputy-mayor. Honorary freemen. Local Members of Parliament. Past mayors (in order of seniority). Past sheriffs (in order of seniority). Clerk of Peace of the Borough. Aldermen (in order of seniority or in "ward" order). Councillors (in order of seniority or in "ward" order). Co-opted members of committees. Coroner. Elective auditors. Officials. Representatives of local institutions.

It is also correct in a procession for the officers, councillors and aldermen to precede the mayor in that order (juniors first), but in such cases the magistrates should follow the mayor in order of their seniority. When official visitors from other boroughs are present, they rank amongst themselves in order of seniority of incorporation, county boroughs preceding non-county boroughs, and as guests they are granted precedence over the aldermen and councillors of the borough in which the function is held. Custom appears to vary when the county council is represented in a civic procession. Representatives of urban and rural district councils follow the officials of the borough in which the function is held. [119]

London.—It would take a volume to do justice to this title in regard to the City of London Corp'n. The bibliography regarding the subject, both general and private, is voluminous (*l*).

There is little ceremony attaching to the procedure of the L.C.C. except in the annual investiture of their chairman, etc.

Each metropolitan borough council has evolved a ceremonial procedure for the installation of the mayor, civic attendance at church, etc.

The Westminster City Council is unique in that it succeeded to the Court of Burgesses of Westminster which was set up in the reign of Elizabeth by Lord Burleigh. The Westminster City Council possess the mace and other regalia, and on ceremonial occasions the aldermen wear mazarine blue gowns similar to those which the burgesses previously wore. [120]

is designed to secure to the mayor the right to preside over all meetings of committees of justices, including licensing committees. See also *Lawson v. Reynolds*, [1904] 1 Ch. 718; 33 Digest 70, 446.

(*k*) S. 163 (5) of the Municipal Corporations Act, 1882; 10 Statutes 629.

(*l*) See in particular "The Corp'n. of the City of London," by A. J. Glasspool. Many guide books give details of the ceremonials of the City Corp'n., such as "The City of London Guide," by Charles W. Harper. The corp'n. have their own Book of Ceremonials which does not go into the history of the various ceremonies, but describes in detail the procedure and the costumes to be worn. This publication is for private circulation only.

CERTIFIED HOMES

See INEBRIATES, INSTITUTIONS FOR.

CERTIORARI

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See also title : ACTIONS BY AND AGAINST LOCAL AUTHORITIES.

General Outline.—The King's Bench Division of the High Court of Justice possesses a general controlling and supervising power over all inferior jurisdictions. One of the means by which this control is exercised is the writ of certiorari. The writ requires the judges or officers to whom it is directed to certify or send the proceedings before them into the High Court, in order that their legality may be tested, or that more sure and speedy justice may be done. The writ may be asked for in both criminal and civil proceedings. Only those types of proceedings which are likely to affect a local authority are dealt with in detail in this article.

In some cases orders in the nature of a writ of certiorari are employed to achieve a like result. This would be done where the court to which the order is directed is itself a part of the High Court. A writ in such cases is not necessary, since the removal can be obtained by order alone. To remove an indictment from the Central Criminal Court into the King's Bench Division such an order would be appropriate (a). The same procedure would be adopted in the case of a court of assize, as this, too, is a part of the High Court (b). Orders of this nature are dealt with in the same manner and by the same process as writs of certiorari (c). [121]

(a) *R. v. Dudley* (1884), 14 Q. B. D. per Lord COLERIDGE, C.J., at p. 280; 16 Digest 399, 2425; and see *R. v. Northallerton County Court Judge*, [1898] 2 Q. B. 680, C. A.; affirmed *sub nom. Skinner v. Northallerton County Court Judge*, [1899] A. C. 439; 13 Digest 543, 979; and *R. v. Central Criminal Court Justices*, [1925] 2 K. B. 48; Digest (Supp.).

(b) Supreme Court of Judicature (Consolidation) Act, 1925, s. 18; 4 Statutes 152.

(c) Crown Office Rules, r. 17.

Purposes for which the Writ is Granted.—The chief purposes for which a writ of certiorari is employed are : certiorari to remove an action or indictment for trial; certiorari for judgment on an indictment; certiorari to quash; certiorari for the purpose of execution; certiorari to remove orders on a case stated. To remove a civil action into the High Court it is in general necessary to show that it is fit to be tried by the High Court. There are, however, cases where there is a common law right to remove actions for trial from inferior tribunals. Such cases are not of sufficient frequency to make more than a passing mention necessary. It would be a good ground for the grant of a writ, if it were shown that the case would raise difficult points of law, which would be more adequately dealt with in the High Court (*d*).

The desirability of adopting this course must be evident before a writ will be issued, and if a similar result is obtainable by another method it is not usual to grant a writ. In cases where there is a right of appeal to the High Court the parties are usually left to exercise that right (*e*).

Actions have been removed where there was ground for saying that a fair trial could not be had in the lower court (*f*). In the case of county court actions, writs of certiorari are now seldom resorted to, since the County Courts Act, 1888, sect. 85 (*g*), provides for the transfer of an action to another county court when a fair trial is not likely to be had at the court where the action was entered.

Indictments may similarly be removed for trial, coroners' inquisitions being included under this description (*h*), and the presentments of Commissioners of Sewers (*i*).

Indictments are removed for judgment where a special verdict has been found by the jury (*k*) or where the judge of the court below has doubts as to the appropriate punishment which should be awarded (*l*). This procedure is not applicable in the case of a misdemeanor (*m*).

The most important purpose for which this writ is used is to bring up proceedings for the purpose of quashing them. A local authority in the exercise of its many statutory duties may well be concerned with the writ in this form. Any determination of a person or body entrusted by statute with judicial functions out of the ordinary course of legal procedure, but within the common law, is amenable to the jurisdiction of the King's Bench Division in this respect. Were the law otherwise there would be no authority charged with the duty of seeing that such bodies and persons carried out their functions according to law. The bodies over whom the King's Bench Division exercise their supervisory powers are many. For example, the censors of the Royal College of Physicians (*n*); Traffic Commissioners acting under the Road Traffic Act, 1930 (*o*); county councils when granting

(*d*) *Potter v. Great Western Colliery Company* (1894), 10 T. L. R. 380, C. A.; 13 Digest 545, 998.

(*e*) *Soleman v. London, Chatham and Dover Railway* (1861), 10 W. R. 59; 13 Digest 545, 995.

(*f*) *Bates v. Warner* (1889), 5 T. L. R. 582, C. A.; *Potter v. Great Western Colliery Company*, *supra*.

(*g*) 3 Statutes 864.

(*h*) *R. v. Ingham* (1864), 5 B. & S. 257; 13 Digest 249, 237.

(*i*) *R. v. Baker* (1859), 28 L. J. (Q. B.) 377; 16 Digest 452, 3225.

(*k*) *R. v. Dudley* (1884), 14 Q. B. D. 273, at p. 280; 16 Digest 399, 2425.

(*l*) *R. v. Porter* (1703), 1 Salk. 149; 16 Digest 432, 2927.

(*m*) *R. v. Nichols* (1742), 13 East, 412, n.; *R. v. Kenworthy* (1823), 1 B. & C. 711; 16 Digest 432, 2928.

(*n*) *Greenwell v. Burwell* (1700), 1 Ld. Raym. 454; 16 Digest 400, 2440.

(*o*) See ss. 62—66; 23 Statutes 656—658.

cinematograph licences (*p*); an assessment committee under the R. & V.A., 1925 (*q*).

It is not necessary to make more than a passing reference to the other purposes for which the writ is granted. An application for a writ to remove depositions for bail or for the purpose of execution is unlikely to affect a local authority. [122]

To Whom Writ is Issued. (i.) *Generally*.—The power is to issue the writ to inferior courts. This expression must be interpreted in its widest sense. The jurisdiction of the High Court is not confined to supervising what may be described as courts of law such as a police court.

Any body of persons who have authority to perform judicial acts would be considered a court. A judicial act is in this sense contrasted with a ministerial act. Justices of the peace when acting as licensing justices do not constitute a court (*r*), but they are acting judicially and may be controlled by the writ of certiorari (*s*).

The report of a chief gas examiner of a county council has been described as virtually a judgment and may be removed by writ of certiorari and quashed (*t*). The grant of a licence by a county council under the Cinematograph Act, 1909 (*u*), has been held to be a judicial act (*a*). Instances of the issue of the writ to different bodies are too numerous to permit of an exhaustive list being given (*b*). The rule of law was restated in concise and clear terms in the Court of Appeal in *R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Company* (1920), Ltd. (*c*). The test there laid down was that the writ would issue to any body of persons whose duty it is to decide questions affecting the rights of subjects, and who are bound to act judicially. The application of this test has resulted in the courts holding that a writ of certiorari will issue to a local authority acting as the town planning authority upon the consideration of an application for permission under an interim development order (*d*). [123]

(ii.) *Under Statute*.—The remedy by way of certiorari is expressly provided for by the legislature in certain statutes. The reason would appear to be that it is in such cases doubtful whether the writ would be available at common law, though the desirability of such a remedy is beyond question. The statute in many cases imposes restrictions upon the grant of the writ, and lays down the grounds which must be shown before it will issue. In addition to the usual rules applying to the grant of a writ of certiorari, these specific statutory requirements must be strictly observed.

(*p*) See *R. v. L.C.C., Ex parte London and Provincial Electric Theatres, Ltd.*, [1915] 2 K. B. 466; 42 Digest 920, 154.

(*q*) See Part II. thereof; 14 Statutes 640 *et seq.*; *R. v. Surrey Assessment Committee*, [1933] 1 K. B. 776; Digest (Supp.).

(*r*) *Boulter v. Kent Justices*, [1897] A. C. 556; 16 Digest 99, 6.

(*s*) *R. v. Johnson*, [1905] 2 K. B. 59; 16 Digest 414, 2732. The order of the confirming authority under the Licensing Acts is also a judicial act (*R. v. Manchester Justices*, [1899] 1 Q. B. 571; 16 Digest 99, 9).

(*t*) *R. v. L.C.C., Ex parte Commercial Gas Company* (1895), 11 T. L. R. 337; 25 Digest 492, 124.

(*u*) 19 Statutes 852.

(*a*) *R. v. L.C.C., Ex parte London and Provincial Electric Theatres, Ltd.*, *supra*.

(*b*) For greater detail, see 9 Halsbury (Halsham ed.), title "Crown Practice," pp. 855 *et seq.*

(*c*) [1924] 1 K. B. 171, *per ATKIN, L.J.*, at p. 204; Digest (Supp.).

(*d*) *R. v. Hendon R.D.C., Ex parte Chorley*, [1933] 2 K. B. 696; Digest (Supp.).

The tendency of modern legislation has been to substitute an appeal to the High Court, in the place of proceedings by way of certiorari. It is thought that in this way the many technical rules surrounding and hampering the grant of the writ will be avoided. The greatest advance in this attempt to simplify the procedure was made in the case of the Audit (Local Authorities) Act, 1927 (*e*). Before the passing of the Act of 1927 many cases came before the court on an application for a writ of certiorari to question the allowance, disallowance or surcharge of a district auditor (*f*). The Act of 1927 substituted a procedure by way of appeal to the Minister of Health or the High Court according to the amount of money involved. The law has now been consolidated in sects. 229 to 231 of the L.G.A., 1933 (*g*), and the Audit (Local Authorities) Act, 1927, has been repealed. At the same time two other statutes giving the right to proceed by way of certiorari have also been repealed and the procedure by appeal to the High Court substituted in sects. 184 and 187 (*h*).

Under the Poor Law Act, 1930, sect. 142 (*i*), rules, orders and regulations made by the Minister of Health may be removed on a writ of certiorari into the High Court. This section contains statutory provisions governing the application for, and the grant of, the writ. The statute does not, however, purport to create a new right or remedy; it qualifies and limits a right which already exists (*j*). [124]

(iii.) *Certiorari taken away by Statute*.—Statutes not uncommonly contain a provision prohibiting the removal of proceedings under them by writ of certiorari.

The protection afforded by the writ is, however, considered of such importance that nothing short of express and specific words taking away the right to apply for a certiorari will suffice. Where certiorari is taken away by statute with regard to a certain offence, and a subsequent enactment prescribes additional powers of punishment with respect to that offence, certiorari is not taken away when the proceedings are under the later statute (*k*). From this it will be seen that enactments which take away certiorari are construed strictly by the courts (*l*). The rule requiring express and specific words to take away a certiorari applies only where the writ is available at common law and has no application to certiorari under statute (*m*).

The writ is, however, granted even where a statute expressly takes it away when the applicant is the Crown (*n*), following the usual rule that such provisions do not affect the Crown unless such an intention is clearly shown. Private persons prosecuting in the King's name

(*e*) 10 Statutes 879.

(*f*) E.g. *R. v. Grain, Ex parte Wandsworth Guardians*, [1927] 1 K. B. 540; [1927] 2 K. B. 205, C. A.; 37 Digest 219, 134.

(*g*) 26 Statutes 430.

(*h*) L.G.A., 1888, s. 80; 10 Statutes 751; and Municipal Corpn's. Act, 1882, s. 141; 10 Statutes 623, which dealt with payments out of the funds of a county or borough.

(*i*) 12 Statutes 1039.

(*j*) *R. v. Woodhouse*, [1906] 2 K. B. 501, C. A., per FLETCHER MOULTON, L.J., at p. 535; 16 Digest 99, 10.

(*k*) *R. v. Terret* (1788), 2 Term Rep. 735; 16 Digest 438, 3031.

(*l*) *R. v. Brier* (1850), 14 Q. B. 563; 16 Digest 406, 2523; *R. v. Sandon Inhabitants* (1854), 3 E. & B. 547; 16 Digest 405, 2518; *R. v. Hamworth Inhabitants* (1781), 2 Stra. 900; 16 Digest 437, 3023; *R. v. Lancashire Justices* (1839), 11 Ad. & El. 144; 16 Digest 438, 3027.

(*m*) *R. v. Hunt* (1856), 6 E. & B. 408; 16 Digest 437, 3022.

(*n*) *R. v. Clace Inhabitants* (1769), 4 Burr. 2456, at p. 2458; 16 Digest 402, 2471; *R. v. Davies* (1794), 5 Term Rep. 626; 16 Digest 402, 2480; *R. v. Allen* (1812), 15 East, 333; 16 Digest 439, 3039.

would be covered by this even though the Crown is not directly interested (o).

The control of the High Court remains to a large extent even where certiorari is taken away. Where the inferior tribunal has acted without, or in excess of its jurisdiction, certiorari will be granted even though there be a provision taking it away. The reason for this is that on a strict construction the inferior court has never brought itself within the terms of the statute (p). [125]

Circumstances in which the Writ is Granted. (i.) *Generally*.—The Crown by the Attorney-General is granted the writ as of course (q), even in cases where certiorari is taken away by statute (r) or the statutory conditions are not fulfilled (s). There are other examples of the issue of a certiorari as of course, but they do not affect local government administration.

Except for these exceptional cases the grant of the writ is discretionary. The court will, however, exercise their discretion and grant the writ *ex debito justitiæ* where it is shown that the inferior tribunal acted without jurisdiction or in excess of jurisdiction (a). The applicant for the writ *ex debito justitiæ* to quash the proceedings must be some person who is aggrieved and not a member of the general public (b). Even a person aggrieved will not succeed in his application if the court consider that his conduct disentitles him to receive the writ (c). Where certiorari is taken away by statute the court will issue the writ in cases of absence of jurisdiction (d). The principle underlying the issue of the writ is in each case that a position has arisen working injustice, which cannot be set right except by the intervention of the High Court. From this it follows that no grant will be made unless the court are satisfied that some benefit will accrue to the applicant (e).

Where the power to grant certiorari depends upon statute the discretion of the court is regulated by the terms of the statute. An examination of the enactment in each case is necessary since cases have arisen in which the powers of the court as defined by statute are greater than at common law, and examples are not wanting where a determination may be given upon the correctness of the finding of the court below both on matters of fact and of law, so that the proceedings constitute an appeal (f). [126]

(ii.) *Defect of Jurisdiction*.—A defect in the jurisdiction of the inferior tribunal may be shown in a variety of ways. It may appear

(o) *R. v. Cumberland County Inhabitants* (1795), 6 Term Rep. 194; 16 Digest 439, 3038; *R. v. Bodenham Inhabitants* (1774), 1 Cowp. 78; 16 Digest 439, 3037; *R. v. Boulbee* (1836), 4 Ad. & El. 498; 16 Digest 439, 3046.

(p) *Colonial Bank of Australasia v. Willan* (1874), L. R. 5 P. C. 417; 16 Digest 440, 3060.

(q) *R. v. Eaton* (1787), 2 Term Rep. 89; 16 Digest 402, 2468.

(r) *R. v. Davies* (1794), 5 Term Rep. 626; 16 Digest 402, 2480.

(s) *R. v. Berkley* (1754), 1 Keny. 80; 16 Digest 402, 2478.

(a) *R. v. Surrey Justices* (1870), L. R. 5 Q. B. 466; 16 Digest 422, 2822.

(b) *R. v. Surrey Justices*, *supra*; *Ex parte Stott*, [1916] 1 K. B. 7; 16 Digest 459, 3341; *R. v. Bedfordshire County Council*, [1920] 2 K. B. 465; 16 Digest 404, 2494; *R. v. Richmond Confirming Authority*, [1921] 1 K. B. 248; 16 Digest 459, 3340; *R. v. Butt*, *Ex parte Brooke* (1922), 38 T. L. R. 537; 30 Digest 78, 582.

(c) *R. v. Williams*, [1914] 1 K. B. 608; 16 Digest 403, 2488; and *cf. R. v. West Suffolk County Compensation Authority*, [1919] 2 K. B. 374; 16 Digest 403, 2493.

(d) *Ex parte Bradlaugh* (1878), 3 Q. B. D. 509; 16 Digest 441, 3070.

(e) *R. v. Newborough* (1869), L. R. 4 Q. B. 585; 16 Digest 418, 2778.

(f) *R. v. Brighton Corpn.* (1907), 96 L. T. 762, C. A.; 26 Digest 386, 1148; *Re Dent Tithe Commutation* (1845), 8 Q. B. 43; 7 Digest 267, 21.

that there was no power whereby they might enter upon the inquiry or some part of it, or that the subject-matter of the inquiry was not one with which they could deal (g). Frequently the want of jurisdiction arises because some essential condition precedent remains unfulfilled. The commonest form of condition is the requirement that certain notices shall be served before the lower court can deal with the case (h).

The lower court may appear at the commencement of the proceedings to have full jurisdiction to adjudicate upon the case before them. Having rightly entered upon the inquiry, facts come to light which prevent the tribunal proceeding further. For example, justices are not empowered to hear and determine any case of assault which raises a question of title to land (i). This question may not and usually does not arise until the justices have commenced to hear the merits of the case. Such a claim of right sufficient to oust the justices' jurisdiction must be of a character recognised by the law (k).

Under such circumstances a certiorari will issue, even though the claim of right is not advanced at the earliest possible moment (l). It is for the magistrates to decide in the first place whether they have jurisdiction, and their decision may be tested by certiorari. The grant of the writ for this purpose is based upon the distinction that the question of jurisdiction is a matter apart and distinct from the merits of the case, which would not be examined upon proceedings by way of certiorari. [127]

(iii.) *Bias through Interest on the part of the Tribunal.*—A court is improperly constituted, and acts without jurisdiction, if any of the members have an interest in the subject-matter of the inquiry. Certiorari will be granted to quash the decision of a tribunal which acts under such circumstances (m). The interest alleged must be direct and real. In cases of pecuniary interest it is assumed that any determination would be biassed, but in all other cases it is necessary to demonstrate that the interest is of such a nature that the decision given was likely to be biassed (n) or was in fact biassed (o). *A fortiori* where collusion, corruption or fraud is shown on the part of the prosecutor, certiorari will issue to quash the decision of the court. The authorities distinguishing those cases where bias was held to be substantial from those where the contrary was found are too numerous to permit of their being cited or discussed here (p). [128]

(iv.) *Error on the Face of the Proceedings.*—Where it appears from an error on the face of the proceedings that the decision of the lower

(g) *Ex parte Bradlaugh* (1878), 3 Q. B. D. 509; 16 Digest 441, 3070; *Re Penny and South Eastern Railway Co.* (1857), 7 E. & B. 660; 16 Digest 465, 3410.

(h) *R. v. Eaves* (1870), L. R. 5 Exch. 75; 39 Digest 305, 822; *R. v. Farmer*, [1892] 1 Q. B. 637, C. A.; 3 Digest 393, 306.

(i) Offences against the Person Act, 1861, s. 46; 4 Statutes 614; *R. v. Pearson* (1870), L. R. 5 Q. B. 237; 16 Digest 425, 2350.

(k) *Hargreaves v. Diddams* (1875), L. R. 10 Q. B. 582; 16 Digest 425, 2347; *Foulger v. Steadman* (1872), L. R. 8 Q. B. 65; 38 Digest 344, 528; *Walkins v. Major* (1875), L. R. 10 C. P. 662; 16 Digest 425, 2346.

(l) *R. v. Taunton St. Mary (Inhabitants)* (1815), 3 M. & S. 465; 16 Digest 424, 2839.

(m) *R. v. Rand* (1866), L. R. 1 Q. B. 230; 16 Digest 427, 2869; *R. v. Farrant* (1887), 20 Q. B. D. 58; 16 Digest 382, 2198.

(n) *R. v. Rand*, *supra*, and *R. v. Farrant*, *supra*; *R. v. Meyer* (1875), 1 Q. B. D. 173; 33 Digest 294, 100; *R. v. Huggins*, [1895] 1 Q. B. 563; 33 Digest 293, 92.

(o) *R. v. Handsley* (1881), 8 Q. B. D. 383; 33 Digest 297, 125; *R. v. Milledge* (1879), 4 Q. B. D. 332; 33 Digest 297, 118.

(p) 9 Halsbury (Hailsham ed.), title "Crown Practice," pp. 883 *et seq.*

court is wrong, it will be quashed on a certiorari. Where the information before the justices disclosed no offence punishable by the court the conviction recorded was quashed (*g*).

Accidental errors appearing on the face of the proceedings would now be amended by the High Court, but where the mistake is of a substantial nature the finding would be quashed (*r*). No writ will be granted on the ground that the lower court was wrong in law, nor will evidence be heard for the purpose of upsetting the decision upon a point of fact. To permit this would be to provide an appeal from the decision of the lower court which is not the function of the writ of certiorari (*s*). [129]

Procedure.—The procedure governing a certiorari to quash the decision of an inferior tribunal is that which will in general concern a local authority (*t*). The proceedings are on the Crown side of the King's Bench Division and are governed by the Crown Office Rules. An application is made to a divisional court by motion for an order *nisi*. When no divisional court is sitting the application is made to a judge at chambers for a summons to show cause (*u*). The motion must be supported by affidavits setting out the relevant facts.

Rule 21 lays down a time limit of six months within which the writ must be applied for. The time runs from the making of the determination which it is desired to quash. This rule does not apply to proceedings taken by the Attorney-General acting on behalf of the Crown (*a*).

A further affidavit is necessary to show that the order *nisi* or the summons to show cause has been served on the parties whose decision is questioned six days before the return day (*b*). The party upon whom the order *nisi* is served then has an opportunity of appearing and showing cause why the rule *nisi* should not be made absolute.

Strictly the writ of certiorari is only for the removal of the proceedings into the High Court. If, therefore, it is desired to have them quashed, a further motion to quash should be made. Power is, however, given under Rule 33 to the divisional court to incorporate an order to quash in the order absolute to remove the proceedings without a further and additional order being made. This is frequently done.

Were this power not given to the divisional court, the party prosecuting the writ would have to move the court again to quash the proceedings returned in obedience to the writ already obtained. [130]

London.—The general law relating to certiorari applies equally to London. In particular, sect. 9 of the London Government Act, 1899 (*c*),

(*g*) *R. v. Cridland* (1857), 7 E. & B. 853; 16 Digest 428, 2883.

(*r*) *R. v. Higham* (1857), 7 E. & B. 557; 16 Digest 428, 2878, where amendment was permitted; *R. v. Cridland*, *supra*, where the error was held to be substantial.

(*s*) *R. v. Cheshire J.J.* (1912), 29 T. L. R. 23; 16 Digest 417, 2770, which was a case for a *mandamus*, but the principles are the same as for *certiorari*; *R. v. Markham*, [1923] W. N. 112; Digest (Supp.); *R. v. Nat Bell Liquors, Ltd.*, [1922] 2 A. C. 128 (P. C.); 16 Digest 419, 2795; and see also *R. v. Christian* (1842), 12 L. J. (M. C.) 26; 16 Digest 419, 2785; *R. v. Bolton* (1841), 1 Q. B. 66; 16 Digest 418, 2775.

(*t*) For full details of procedure on all cases, see 9 Halsbury (Hailsham ed.), title "Crown Practice," pp. 889 *et seq.* N.B.—The Administration of Justice (Miscellaneous) Provisions Act, 1933, s. 5; 26 Statutes 642, provided that rules should be made for the abolition of the procedure of motion for an order *nisi*, but the rules are not yet published.

(*u*) Crown Office Rules, rr. 20, 30.

(*a*) *R. v. Amendt*, [1915] 2 K. B. 276, C. A.; 16 Digest 461, 3356.

(*b*) Crown Office Rules, r. 21.

(*c*) 11 Statutes 1231.

provides that any order of a borough council for the payment of moneys to or by the borough treasurer may be removed into the High Court by writ of certiorari and may be wholly or partly disallowed or confirmed on motion and hearing with or without costs according to the judgment and discretion of the court.

A similar provision is contained in sect. 80 of the L.G.A., 1888 (*d*), in regard to payments into and out of the county fund of the L.C.C.

The Valuation (Metropolis) Act, 1869, s. 40 (*e*), provides, in regard to appeals, that proceedings may be had by special case or certiorari or otherwise for questioning any decision of quarter sessions for the county of London as may be had for questioning any decision of the justices elsewhere, provided that every such certiorari shall be sued out within three months after the decision is given.

Proceedings are not to be quashed for want of form or removed by certiorari into the High Court under the Metropolis Management Act, 1855, sect. 230 (*f*); the Municipal Corpsns. Act, 1882, sect. 220 (*g*); the Disorderly Houses Act, 1751, sect. 10 (*h*); the Hammersmith Bridge Act, 1824, sect. 163 (*i*). [131]

(*d*) 10 Statutes 751.

(*f*) 11 Statutes 941.

(*h*) 4 Statutes 363.

(*e*) 14 Statutes 566.

(*g*) 10 Statutes 647.

(*i*) 5 Geo. 4, c. cxiii.

CESSPOOLS

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See also titles : BUILDING BYE-LAWS ;
NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH
ACTS ;
SEWERS AND DRAINS.

General.—Cesspools or cesspits may be defined as tanks or small reservoirs constructed for the purpose of retaining sewage pending its periodical removal and disposal. They do not fall within the definition of a "sewer" given in sect. 4 of the P.H.A., 1875 (*a*). A cesspool may, however, by the construction of a sewer leading out of it, become a mere "catchpit" and so part of the whole sewer (*b*). [132]

By sect. 23 of the P.H.A., 1875 (*c*), where any house, whether in an urban or rural district, is "without a drain sufficient for effectual drainage" the local authority may require the owner to make a drain

(*a*) 13 Statutes 625 ; *Sutton v. Norwich Corporation* (1858), 27 L. J. (Ch.) 739 ; 41 Digest 3, 1 ; *Meader v. West Cowes L.B.*, [1892] 3 Ch. 18 ; 41 Digest 5, 19.

(*b*) *Pakenham v. Ticehurst R.D.C.* (1903), 67 J. P. 448 ; 41 Digest 9, 64.

(*c*) 13 Statutes 635.

emptying into any sewer which the authority is entitled to use and which is not more than 100 feet from the site of such house; if there be no sewer within that distance, the drain must empty into such "covered cesspool or other place not being under any house" as the authority direct. [133]

The drainage of houses into cesspools is not, of course, desirable from a sanitary point of view when a sewer is available; but sect. 23 will not enable an authority who lay a new sewer, within 100 feet of a house "effectually" drained into a cesspool, to insist on the owner connecting his drain with their sewer at his expense (*d*). [134]

In any borough or urban district it is unlawful newly to erect any house or to rebuild any house which has been pulled down to or below the ground floor, or to occupy any house so newly erected or rebuilt, unless and until it is drained into some public sewer within 100 feet of "some part of" the site, or, if there be no such sewer, then into such covered cesspool or other place, not being under any house, as the council direct (sect. 25). [135]

Any person who allows the contents of any cesspool to overflow or soak therefrom is liable to a penalty of 40s. for every such offence and to a further penalty of 5s. for every day during which the offence is continued (P.H.A., 1875, sect. 47) (*e*). [136]

Any cesspool which is in such a state as to be a nuisance or injurious to health is a nuisance within sect. 91 of the Act of 1875, and may be abated under the procedure laid down in sects. 94 *et seq.* (*f*) of that Act. [137]

Dwelling-Place over Cesspool.—In boroughs and urban districts for which Part III. of the P.H.A. Amendment Act, 1890, has been adopted it is unlawful to occupy any room, a portion of which extends immediately over any cesspool, as a dwelling-place, sleeping-place or work-room, or place of habitual employment of any person in any manufacture, trade, or business during any portion of the day or night (*g*). Any person who, after the expiration of a month from the adoption of the section, and after seven days' notice from the authority, so occupies or suffers to be occupied any such room, is liable to a penalty of 40s. and to a daily penalty of 10s. for each day on which the offence is continued after conviction. [138]

Filling up Objectionable Cesspools.—Sect. 46 of the P.H.A. Amendment Act, 1907 (*h*) (which may be put in force by Order of the Minister of Health) empowers the local authority to fill up cesspools which are "prejudicial to health, or otherwise objectionable for sanitary reasons." There must be a preliminary report to this effect by the M.O.H., the surveyor or the sanitary inspector; and if on this report the local authority think it desirable that the cesspool should be filled up, they may require the owner or occupier of the house to fill it up, and any drain connected therewith to be disconnected, or cause such cesspool to be so altered as to remove objection thereto and in default may, them-

(*d*) See *St. Marylebone (Vestry) v. Viret* (1865), 19 C. B. (N. S.) 424; 41 Digest 26, 202; *A.-G. v. Clerkenwell (Vestry of)*, [1891] 3 Ch. 527; 41 Digest 42, 304; *St. Martin-in-the-Fields (Vestry of) v. Ward*, [1897] 1 Q. B. 40; 41 Digest 26, 204; and cf. s. 24 of the Act of 1875.

(*e*) 13 Statutes 645.

(*f*) *Ibid.*, 663 *et seq.*

(*g*) P.H.A. Amendment Act, 1890, s. 24; 13 Statutes 834. This section was put in force in all rural districts, without adoption, by the Rural District Councils (Urban Powers) Order, 1931 (S.R. & O., 1931, No. 530); 24 Statutes 262.

(*h*) 13 Statutes 928.

selves, do the work and recover the expenses summarily, or, where the owner is the person in default, as private improvement expenses (*hh*).
[139]

Examining Cesspools.—By sect. 41 of the Act of 1875 (*i*) on the written application of any person to the local authority stating that any cesspool on or belonging to any premises within their district is a nuisance or injurious to health or, in districts in which the P.H.A. Amendment Act, 1907 (*j*), is in force they came to that opinion on the receipt of a written report by their surveyor or sanitary inspector, they may empower their surveyor or sanitary inspector, after twenty-four hours' written notice to the occupier, or in case of emergency without notice, to enter the premises, cause the ground to be opened, and examine the cesspool. If the cesspool be found to be in good condition he must cause the ground to be closed and any damage to be made good, the expenses falling on the local authority. If found to be in bad condition, or in need of alteration or amendment, notice must be given to the owner or occupier requiring him, within a reasonable time, to do the necessary works. If the notice is not complied with, the person to whom it was given is liable to a penalty of 10s. for every day he is in default, and the local authority may execute the works, and recover in a summary manner from the owner the expenses incurred in so doing, or may by order declare the same to be private improvement expenses (*k*). [140]

Local Authority Undertaking Cleansing.—Every local authority may, and when required by the M. of H. must, undertake or contract for the cleansing of cesspools, either for the whole or any part of their district (P.H.A., 1875, sect. 42). In the event of default by the local authority, without reasonable excuse, and after notice from the occupier of any house requiring them to cleanse his cesspool within seven days, the local authority, if they have undertaken, or contracted for, the work, are liable to a penalty of 5s. per day of default (sect. 43).

In a case where the local authority had resolved to empty cesspools gratuitously every three months, and oftener if paid for doing so, it was held that they had a reasonable excuse for not cleansing, without payment, a particular owner's cesspool within three months after the last previous cleansing (*l*). [141]

Bye-laws as to Cleansing Cesspools and Removal of Refuse.—Where the local authority do not themselves undertake or contract for the cleansing of cesspools, they may make bye-laws (subject to the approval of the M. of H.) imposing this duty at such times as they think fit on the occupier of the premises (sect. 44). A model bye-law of the M. of H. in this matter provides that "the occupier of any premises shall, when necessary and at least once in every six months, cleanse every cesspool belonging to the premises." [142]

The council of any borough or urban district who have adopted Part III. of the Act of 1890 and of any rural district may make bye-

(*hh*) By s. 7 (2) an appeal to the M. of H. as under s. 268 of P.H.A., 1875; 13 Statutes 913, 736.

(*i*) 13 Statutes 642.

(*j*) *Ibid.*, 924.

(*k*) As to recovery of private improvement expenses and appeal to the M. of H., see ss. 257 and 268 of the Act of 1875; 13 Statutes 732, 736.

(*l*) *Leck v. Epsom R.D.C.*, [1922] 1 K. B. 383; 38 Digest 237, 660. A local authority may resolve to cease to undertake such work (*Whitbread & Co. v. Staines Rural Council*, [1925] Ch. 89; 38 Digest 237, 661) unless they have undertaken it on a requisition from the M. of H.

laws as to the times for removing offensive matter or liquid, the construction of the vessels or carts used for the purpose, and the cleansing of places where any of the matter or liquid has been spilt (*m*). [143]

Bye-laws as to Construction of Cesspools.—Both urban and rural authorities may now make bye-laws (subject to the approval of the M. of H.) with respect to cesspools in connection with buildings under sect. 157 of the Act of 1875 (*n*). This power is extended by sect. 23 (2) of the Act of 1890 (*o*) so as to allow the bye-laws to affect buildings erected before the times mentioned in sect. 157 of the Act of 1875. Sect. 23 of the Act of 1890 may be adopted by any urban authority, and has in fact been generally adopted; and sub-sects. (1) and (2) of that section have been put in force in all rural districts by the R.D.C. (Urban Powers) Order, 1931 (*p*). Hence in these cases bye-laws with respect to cesspools may be made which will apply whenever a cesspool is constructed, whether in connection with a new building or an old building. [144]

The following are the bye-laws relating to cesspools in the model code issued by the M. of H. :

“Every person who shall construct a cesspool in connection with a building shall comply with such of the following requirements as are applicable :

(1) The cesspool shall be constructed—

(a) at least *fifty feet* from a dwelling-house or public building, or any building in which any person is employed in any manufacture, trade or business,

(b) at least *eighty feet* from any well, spring or stream of water used or likely to be used by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, and otherwise in such a position as not to render any such water liable to pollution.

(2) The cesspool shall be so constructed as to afford ready means of access for cleansing the cesspool and for removing its contents from the premises to which the cesspool may belong without carrying them through any dwelling-house or public building, or any building in which any person is employed in any manufacture, trade or business.

(3) The cesspool shall not communicate with any sewer.

(4) The cesspool shall be constructed of good brickwork in cement on a foundation of good cement concrete and properly rendered inside with cement or asphalted, and with a backing of at least *nine inches* of well-puddled clay or of at least *six inches* of good cement concrete around such brickwork, or otherwise constructed of suitable material and so as to be impervious to liquid.

(5) The cesspool shall be arched or otherwise properly covered over.

The foregoing bye-laws with respect to cesspools shall apply to cesspools in connection with buildings erected either before or after the times mentioned in sect. 157 of the P.H.A., 1875.” [145]

(*m*) S. 26 (1) ; 13 Statutes 835. This section is also in force in all rural districts ; see Rural District Councils (Urban Powers) Order, 1931 (S.R. & O., 1931, No. 580) ; 24 Statutes 262.

(*n*) 13 Statutes 689. This section is also in force in all rural districts ; see Order referred to in note (*m*), *supra*.

(*o*) *Ibid.*, 833.

(*p*) S.R. & O., 1931, No. 580 ; 24 Statutes 262.

London.—The P.H. (London) Act, 1891, sect. 30 (1) (*g*), makes it the duty of every sanitary authority (a) to secure the due cleansing out and emptying at proper periods of ashpits, and of earth-closets, privies, and cesspools (if any), in their district, and the giving of sufficient notice of the times appointed for such removal, cleansing out, and emptying; and (b) where any ashpit, earth-closet, privy, or cesspool in or under any building in the district is not cleansed out or emptied at the ordinary period, and the occupier of the premises serves on the authority a written notice requiring the cleansing out and emptying of the ashpit, earth-closet, privy, or cesspool, to comply with such notice within forty-eight hours after that service, exclusive of Sundays and public holidays. If a sanitary authority fail without reasonable cause to comply with this section they are liable to a fine not exceeding £20.

Under sect. 39 of the same Act, the county council are to make bye-laws with respect to water closets, privies, ashpits, cesspools, and receptacles for dung, and the proper accessories thereof in connection with buildings, and sects. 40 and 41 give power to the sanitary authority to examine any water-closet, earth-closet, privy, ashpit or cesspool upon giving twenty-four hours' notice to the occupier, or owner of the premises if unoccupied; and if on any such examination any work is found not to be in proper order or condition or not to have been made or provided according to the bye-laws of the county council and sanitary authority, every person so offending is liable to a penalty not exceeding £10. If on examination and notice any such work is not placed in proper order and condition further penalties are provided. There is a right of appeal to the county council, whose decision is final. Sect. 16 of the P.H. (London) Act, 1891 (*r*), provides that every sanitary authority is to make bye-laws as to the closing and filling up of cesspools and privies, and as to the removal and disposal of refuse, and as to the duties of the occupier of any premises in connection with house refuse so as to facilitate the removal of it by the scavengers of the sanitary authority.

For the purposes of the Act of 1891 any cesspool so foul or in such state so as to be injurious to health is a nuisance liable to be dealt with summarily under the Act (sect. 2).

The Common Lodging Houses Act, 1851, sect. 13 (*s*), requires that the keeper of a common lodging house shall thoroughly cleanse any cesspool to the satisfaction of the local authority.

The Metropolis Management Act, 1855, sect. 73 (*t*), authorises the sanitary authority in certain cases to compel the owners of houses to construct drains into the common sewer, where of sufficient size, within 100 feet; but by sect. 66 of the Metropolis Management Amendment Act, 1862 (*u*), where it is impracticable or unduly expensive to connect such houses with covered sewers, and where there is no proper sewer within 200 feet of any part of a house or building, the sanitary authority may require the owner to construct and lay a covered drain to lead into a covered, watertight cesspool or tank or other suitable receptacle.

[146]

(*g*) 11 Statutes 1044.
(*s*) *Ibid.*, 884.
(*u*) *Ibid.*, 965.

(*r*) *Ibid.*, 1034.
(*t*) *Ibid.*, 898.

CHAIRMAN OF COUNTY COUNCIL

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See also titles :

COMMITTEES ;
COUNTY COUNCIL ;
COUNTY COUNCILLOR ;

LONDON COUNTY COUNCIL ;
MEETINGS.

Election of Chairman.—Sect. 2 of the L.G.A., 1888 (*a*), applied to the election of a chairman of a county council the law relating to the election of a mayor of a borough contained in sect. 15 of the Municipal Corps. Act, 1882 (*b*), but as from June 1, 1934, sect. 2 of the Act of 1888 was repealed by the L.G.A., 1933, except as respects London, and replaced by sects. 3 and 4 of that Act (*c*). [147]

The chairman of the county council is a person qualified to be a member of the county council who is elected by the council to be their chairman for the period between one annual meeting of the county council and the next annual meeting (*d*). He need not be a member of the council before his election, but he must have the qualifications necessary for the office of county alderman or county councillor, as to which see titles ALDERMAN and COUNTY COUNCILLOR. A retiring chairman is eligible for re-election as chairman (*e*). [148]

The election takes place at the statutory annual meeting of the county council which is held, in the year of election of county councillors, on a date between March 8 and 22, and in other years on a date in March, April or May as the council may fix (*f*). [149]

The election of chairman is the first business to be done at the annual meeting (*g*). At the opening of that meeting the outgoing chairman is in the chair because he is still in office, but if his name is to be submitted to the council for re-election it would seem that the vice-chairman of the council, who, under sect. 5 (2) of the Act continues in office until immediately after the election of the chairman, should preside (see *post*, p. 48). It is doubtful whether the chairman could preside over an election at which he is a candidate (*h*). Should the vice-chairman be

(*a*) 10 Statutes 686.

(*b*) *Ibid.*, 581.

(*c*) For the L.G.A., 1933, see 26 Statutes, pp. 295 *et seq.*

(*d*) L.G.A., 1933, s. 3.

(*e*) *Ibid.*, s. 58.

(*f*) *Ibid.*, Sched. III., Part I., para. 1 (2).

(*g*) *Ibid.*, s. 4 (1).

(*h*) It is clear that if the chairman is paid a salary he cannot preside at a meeting at which he is a candidate for re-election (L.G.A., 1933, s. 76 (1)); but even where no salary is attached to the office of chairman it is conceived that the chairman cannot return himself on the principle that he cannot be judge in his own cause (*R. v. Owens* (1859), 2 E. & E. 86, at p. 91; 20 Digest 123, 994. BLACKBURN, J., in *R. v. White* (1867), L. R. 2 Q. B. 557, at p. 561; 33 Digest 65, 393, stated that the decision in *R. v. Owens* was that "no man can preside at his own election and return himself"), and so in practice cannot both preside and be an effective candidate. This point was expressly reserved in *R. v. Morton*, [1892] 1 Q. B. 39, at p. 42; 20 Digest 138, 1129.

no longer qualified, or is also a candidate for election as chairman, or be absent from the meeting, a member of the council must be selected to preside at the election of the chairman, and ordinarily an alderman who is continuing in office would be chosen, or if no such alderman is willing to preside temporarily, a county councillor.

When there are more than two candidates and the first vote does not produce an absolute majority in favour of any candidate, the candidate having the least number of votes should be struck off the list, and a fresh vote taken, until an absolute majority of the members of the council present and voting is obtained in favour of one candidate.

In the year of election of county councillors the outgoing aldermen are not entitled to vote at the election of chairman (*i*). In the case of an equality of valid votes, the person presiding, whether or not entitled to vote in the first instance, has a casting vote (*k*).

As soon as the chairman is elected he must sign a declaration of acceptance of office, and he then takes the chair (*l*). He continues in office until his successor becomes entitled to act as chairman (unless he resigns, ceases to be qualified, or becomes disqualified) (*m*). As the office of chairman is not dependent on holding also that of alderman or councillor, the office of chairman does not necessarily terminate with the office of alderman or councillor, and holding the office of chairman does not affect the tenure of office of alderman or councillor.

[150]

Functions of Chairman.—The function of the chairman is to preside at meetings of the council. If he is present at a meeting of the council he must preside, unless he has such an interest in the question under discussion as would disqualify him from presiding. As the person presiding he has a second or casting vote in the case of an equality of votes (*n*).

The chairman can call a meeting of the council at any time (*o*). For a meeting of the council it is necessary that there should be a notice of the meeting affixed to the offices of the council, and a summons to attend sent to each member of the council. Under para. 5 of the Second Schedule to the Municipal Corpn. Act, 1882 (*p*), as applied to county councils, it was essential that the notice of a meeting should be signed by the chairman, unless the meeting was called by five members of the council, but this requirement has not been repeated in para. 2 (3) of Part I. of the Third Schedule to the L.G.A., 1933, as in many instances the date of the meeting would have been fixed by a resolution of the council. But where the date of the meeting has not been fixed in this manner, it seems desirable that the chairman should sign the notice convening the meeting, or if the office of chairman is vacant, or the chairman is not available, the vice-chairman of the council. The summons to attend the meeting is signed by the clerk of the council in all cases (*q*).

The chairman of the county council is by virtue of his office a justice of the peace for the county. He is also by virtue of his office a member of the Royal Patriotic Fund Corpn. (*r*).

(*i*) L.G.A., 1933, s. 4 (2).

(*l*) *Ibid.*, s. 61.

(*n*) *Ibid.*, Sched. III., Part V., para. 1 (2).

(*o*) *Ibid.*, Sched. III., Part I., para. 2.

(*q*) L.G.A., 1933, Sched. III., Part I., para. 2 (3) (b).

(*r*) *Ibid.*, s. 3 (5), and Patriotic Fund Reorganisation Act, 1903, s. 1, Sched. I.; 17 Statutes 525, 526.

(*k*) *Ibid.*, s. 4 (3).

(*m*) *Ibid.*, s. 3 (2).

(*p*) 10 Statutes 660.

Sect. 2 (5) of the L.G.A., 1888 (*s*), required a chairman, before acting as a justice of the peace for the county, to take the necessary oaths, if he had not already done so. In sect. 3 (5) of the L.G.A., 1933, this provision appears in a redrafted form which makes it clear that the oaths must be taken, unless on the date on which he accepts office as chairman he is already a justice of the peace for the county and has taken the necessary oaths to enable him to act as a justice for the county. [151]

Acceptance and Resignation of Office.—The office of chairman of the county council is subject to the requirement in sect. 61 of the L.G.A., 1933, that within two months of his election as chairman he should sign a declaration of acceptance of office as chairman and to the prohibition of acting in the office until he has signed the declaration. He may resign by notice in writing addressed to the clerk of the county council, and the resignation takes effect upon the receipt by the clerk of the notice (sect. 62). [152]

Disqualification from Holding Office.—The various disqualifications for being elected or being chairman of a county council are set out in sect. 59 of the 1933 Act, and are similar to those attaching to the office of county councillor; see the title COUNTY COUNCILLOR. While the section does not refer to the chairman, as such, a chairman of a county council, whether elected from inside or outside the council, would be "a member of a local authority" within the meaning of the section.

The chairman would also vacate his office of chairman under sect. 63 (1) of the L.G.A., 1933, if he should fail, throughout a period of six consecutive months, to attend a meeting of the council, unless the failure was due to some reason approved by the council. But under proviso (c) to the sub-sect. this period of six months must be a period commencing on or after June 1, 1934, and proviso (a) allows attendance as a member at a meeting of a committee or sub-committee of the council, or at a meeting of a joint committee, joint board or other body to which any of the functions of the council have been delegated or transferred, to count as attendance at a meeting of the council. For a fuller account of the effect of this section, see the title COUNTY COUNCILLOR.

Formerly under sect. 12 of the Municipal Corpns. Act, 1882 (*t*), as applied to the chairman of a county council by sect. 2 of the L.G.A., 1888 (*u*), an interest in a contract with the county council disqualified the chairman from holding office. But when the L.G.A., 1933, came into force, the position was altered. Interest in a contract with the council does not now disqualify the chairman (*a*), but by the provision in sect. 76, he is required to disclose his interest in any contract or other matter, which may come before his council for consideration, and is prohibited from taking part in the consideration or discussion of it, or from voting on any question with respect to it. [153]

Casual Vacancy.—On a casual vacancy occurring in the office of chairman, sect. 66 (1) of the L.G.A., 1933, requires an election to fill the vacancy to be held not later than the next ordinary meeting of the council, or if that meeting is held within fourteen days after the

(*s*) 10 Statutes 687.

(*u*) *Ibid.*, 686.

(*t*) *Ibid.*, 580.

(*a*) See terms of L.G.A., 1933, s. 59.

occurrence of the vacancy, not later than the following ordinary meeting. The election is to be conducted in the same manner as an ordinary election of a chairman. Under sub-sect. (2) of sect. 66 it would be the duty of the clerk of the county council to convene the meeting for the election. The person elected to fill the casual vacancy holds office only until the date on which the person in whose place he is elected would regularly have retired from office (sect. 68). [154]

Remuneration of Chairman.—The county council may pay the chairman such remuneration as they think reasonable (*b*), and the acceptance of such remuneration does not disqualify him for membership of the council (*c*). The remuneration may be for his personal use or for meeting some expenditure on behalf of the council, but it must not be given in order that payments may be made which would not be justified if made directly (*d*). [155]

Precedence of Chairman.—The chairman of a county council has no specific precedence of the kind enjoyed by the mayor of a borough. The corporate body in a borough consists of the mayor, aldermen and burgesses, that is to say, the inhabitants at large of the borough, so that the mayor, as head of the corpⁿ., is head of the inhabitants of the borough. The corporate body, of which the chairman of the county council is head, is the county council; the inhabitants of the county are not incorporated in the body of which the chairman is the head. The chairman of the county council, therefore, as such has precedence in all county council business, but not in the general or social affairs of the county.

The mayor of a borough is the principal justice of the borough and has precedence in all places in the borough (subject to this exception that he has no precedence over county justices sitting in the borough or over a stipendiary magistrate). The chairman of a county council is in a different position. He cannot be the principal justice for the county because that position is already held by the *Custos Rotulorum*. He cannot take social precedence because His Majesty's Lieutenant for the county comes first, and secondly the sheriff. His precedence, therefore, outside county council business, is a matter of courtesy. In practice he is, as chairman of the county council, invited on a number of public occasions and, if invited by virtue of his office, is given a prominent position. Chairmen of county councils were, as such, invited to be present at the coronation of H.M. King George V. [156]

Vice-Chairman.—A county council are required by sect. 5 (1) of the L.G.A., 1933, to appoint a vice-chairman. He must be a county alderman or county councillor and cannot be selected from outside the council. By sect. 5 (2) of the Act, he is to hold his office until immediately after the election of a chairman at the next annual meeting of the council, unless he has resigned, ceased to be qualified or become disqualified, and his retirement as a county councillor before the date of the annual meeting is immaterial.

Para. 3 (2) of Part I. of the Third Schedule to the Act of 1933 requires that the vice-chairman, if present, shall preside at any meeting of the county council from which the chairman is absent, but this

(b) L.G.A., 1933, s. 3 (4).

(c) *Ibid.*, s. 59.

(d) *A.-G. v. Blackburn Corpn.* (1887), 57 L. T. 385; 33 Digest 85, 548; *A.-G. v. Cardiff Corpn.*, [1894] 2 Ch. 337; 33 Digest 86, 558.

should be read subject to an implied condition, that the vice-chairman is not disqualified from presiding over the transaction of particular business by reason of a special interest in the matter. Similarly, although para. 3 (2) only requires the vice-chairman to preside if the chairman of the county council is absent from the meeting, it would seem that the vice-chairman should preside, where the chairman is present, but is disqualified from presiding. This follows from sect. 5 (3) of the Act of 1933, which provides that subject to the standing orders of the county council, anything authorised or required to be done by, to, or before the chairman of the county council may be done by, to, or before the vice-chairman, except that he should not by virtue of his office act as a justice of the peace. [157]

London.—The chairman of the L.C.C. is appointed under sect. 15 of the Municipal Corpn. Act, 1882 (*e*), as applied by the L.G.A., 1888. His term of office is one year and he continues in office until his successor has accepted office and subscribed the required declaration. This declaration will in future be made under sect. 31 of the L.C.C. (General Powers) Act, 1934 (*ee*). Sect. 32 of the same Act allows a chairman to resign by notice delivered to the clerk, and under sect. 35 a chairman will vacate his office by failure to attend meetings of the council for six months. All these provisions closely follow sects. 61—63 of the L.G.A., 1933, referred to on p. 47, *ante*. The vice-chairman of the L.C.C. is appointed under sect. 2 (6) of the L.G.A., 1888 (*f*).

Under sect. 88 of the L.G.A., 1888 (*g*), the county council may from time to time appoint any fit person to be deputy-chairman, and to hold office during the term of office of the chairman, and may pay to such deputy-chairman such remuneration as the county council may from time to time think fit; and, subject to any rules from time to time made by the county council, anything authorised or required to be done by, to, or before the chairman, may be done by, to, or before such deputy-chairman. [158]

Sect. 23 of the L.C. (General Powers) Act, 1890 (*h*), provides that notwithstanding anything contained in sect. 41 (6) of the L.G.A., 1888 (*i*), it shall be lawful for the chairman, vice-chairman or deputy-chairman of the council, or any councillor acting as chairman in their absence, to act in the capacity of chairman on any question arising before the council although they may be councillors elected for the City of London, and although the question may regard matters involving expenditure in respect of which the parishes in the city are not for the time being liable to be assessed equally with the rest of the county, to county contributions, but this section is not to be construed to confer any power of voting.

Sect. 10 of the L.C.C. (General Powers) Act, 1893 (*k*), substitutes the provisions contained in the schedule to that Act for those contained in the Second Schedule to the Municipal Corpn. Act, 1882. Under these provisions the chairman may at any time call a meeting of the council, and if the chairman does not call a meeting after a requisition for this purpose signed by twenty members of the council has been presented to him, those members may themselves call a meeting.

At every meeting of the council the chairman of the council, if present, is to be chairman of the meeting. If the chairman be absent, the vice-chairman is to be chairman of the meeting. If the chairman

(*e*) 10 Statutes 581.

(*g*) *Ibid.*, 757.

(*k*) 11 Statutes 1114, 1117.

(*ee*) 27 Statutes.

(*h*) 11 Statutes 1021.

(*f*) 10 Statutes 687.

(*i*) 10 Statutes 721.

and vice-chairman are absent, then such alderman (or if none are present such member) of the council as the members then present may choose is to be chairman of the meeting. [159]

CHAIRMAN OF PARISH COUNCIL

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See also titles:

ACCEPTANCE OF OFFICE;
MEETINGS;
PARISH COUNCIL;

PARISH COUNCILLOR;
PARISH MEETING.

This title deals with the election, eligibility, rights, powers and duties of the chairman of a parish council. Since June 1, 1934, these matters have been governed by the L.G.A., 1933 (*a*), and the references below are to the sections of, or schedules to, that Act. [160]

Election of Chairman.—The chairman of the parish council may be elected either from among the parish councillors or from outside the councillors. If the parish council decide to elect as chairman a person who is not already a member of their body, the person chosen must be qualified to be a councillor of the parish (sect. 49 (1)). As to the qualification required for the office of parish councillor, see title **PARISH COUNCILLOR**. [161]

A person elected as chairman, whether from inside or outside the council, is required by sect. 61 (4) to make, in the presence of a member of the council, and deliver to the council, a declaration of acceptance of office in the form prescribed by the Home Secretary. If he fails to do so, his office thereupon becomes vacant. The declaration must be made and delivered at the meeting of the council at which he is elected chairman, or, if the council at that meeting so permit, at a later meeting fixed by the council (sect. 61 (4)). [162]

A chairman elected from outside the parish council has precisely the same powers as a chairman elected from among the parish councillors. [163]

The chairman must be elected at the annual meeting of the parish council, and his election must be the first business transacted at the annual meeting (sect. 49 (1), (2)). The annual meeting is to be held on or within fourteen days after the fifteenth of April in every year (Third Schedule, Part IV., r. 1 (2)). [164]

The chairman continues in office until his successor is elected, unless he has resigned or ceased to be qualified or become disqualified (sect. 49 (3)). The effect of this enactment is that the chairman of the parish council may be present at the annual meeting of the council following his election to the office, and may preside at the election of his successor, unless he is a candidate for re-election as chairman (*b*). During his term of office the chairman continues to be a member of

(a) 26 Statutes 295.

(b) See *ante*, p. 45, note (*h*).

the council notwithstanding the provisions of the Act relating to the retirement of parish councillors at the end of three years (sect. 49 (4)). He will thus remain in office for all purposes until his successor is appointed, including the right referred to below to give both an original and a casting vote at the election of his successor (c).

A retiring chairman of a parish council is eligible for re-election (sect. 58), but the retiring chairman should not preside at the election of his successor, if he is a candidate for re-election to the office, as he would be disqualified from returning himself as the elected chairman (d). If the retiring chairman be a candidate for re-election, the vice-chairman (if any) should preside at the election (see *post*, p. 52). If there is no vice-chairman, or the vice-chairman is a candidate for election as chairman, the parish councillors should select a councillor who is not a candidate for election as chairman, to preside temporarily during the election. The temporary chairman would have the power of voting at the election, and in case of an equal division of votes, would have a second or casting vote (Third Schedule, Part V., r. 1 (2)). Upon the completion of the election of a chairman the temporary chairman should retire from the chair. [165]

Functions of Chairman.—The power of convening meetings of the council is ordinarily to be exercised by the chairman. The chairman of a parish council may call a meeting of the council at any time, subject to the prescribed three days' notice. At every meeting of the parish council the chairman, if present, presides (*ibid.*, Part IV., r. 3 (1)). The chairman of the parish council may also convene a parish meeting, subject to the prescribed seven clear days' notice. If present at a parish meeting for the parish, the chairman of the parish council presides at the meeting unless he is a candidate for election thereat (Third Schedule, Part VI., rr. 2, 3 (1)). He is entitled to attend a parish meeting whether he is or is not a local government elector for the parish (sect. 77 (2)). This right of a chairman, who is not a local government elector of the parish, to attend a parish meeting, is a new right given by the L.G.A., 1933. The right does not, it would seem, extend to a parish meeting held for a ward or other part of a parish (sect. 78 (a)). [166]

In case of an equal division of votes at a meeting of the parish council, the chairman of the meeting has a second or casting vote (Third Schedule, Part V., r. 1 (2)). The grant of this second vote necessarily implies that the chairman may give a first vote on any question before the parish council. If the number of votes for and against the motion are then equal, he may decide the question by giving his second or casting vote. By sect. 77 (2), however, if the chairman is not a local government elector for the parish the only vote he may give at a parish meeting is the casting vote. [167]

Disqualification for Holding Office.—The disqualifications for being elected or being a member of a parish council contained in sect. 59 of the Act of 1933, will be found set out in the title PARISH COUNCILLOR, but that sect. does not, like sect. 46 of the L.G.A., 1894 (e), refer to the chairman of a parish council by that name. A chairman of a parish council, whether elected from among the councillors or outside the council, would be "a member of a local authority" within the meaning of sect. 59 of the Act of 1933, and would be subject to the disqualifications for holding office imposed by the section.

(c) See *R. v. Jackson, Ex parte Pick*, [1913] 3 K. B. 436; 20 Digest 141, 1151.

(d) See *ante*, p. 45, note (h).

(e) 10 Statutes 804.

It should be noted that if a chairman of a parish council has a pecuniary interest in a contract or other matter with the parish council, he is not thereby disqualified for holding office. He is required, however, by the new provisions in sect. 76 of the Act to disclose his interest in any such contract or other matter, and is prohibited from taking part in the consideration or discussion of it, or from voting on any question with respect to it. A chairman of a parish council, who fails to attend a meeting throughout a period of six consecutive months, will, unless the reason for the failure is approved by the council, cease to hold office, under sect. 63 of the Act. For a fuller description of all the enactments referred to in this paragraph, see title PARISH COUNCILLOR. [168]

Resignation of Office.—A person elected to the office of chairman of a parish council may at any time resign his office by writing, signed by him and delivered to the parish council. His resignation will take effect upon the receipt of the notice of resignation by the parish council (sect. 62). [169]

Casual Vacancy.—On a casual vacancy occurring in the office of chairman of the parish council, an election to fill the vacancy shall be held not later than the next ordinary meeting of the council after the date on which the vacancy occurs, or if that meeting is held within fourteen days after that date, then not later than the next following ordinary meeting of the council. The election is to be conducted in the same manner as an ordinary election. The meeting of the council for the election may be convened by the clerk of the council (sect. 66). The person elected to fill the casual vacancy holds office until the date on which the person in whose place he is elected would have retired (sect. 68). [170]

Vice-Chairman.—The parish council may appoint one of their number to be vice-chairman of the council (sect. 49 (5)). A vice-chairman cannot, therefore, be elected from outside the parish council.

Subject to any standing orders made by the parish council, anything authorised or required to be done by, to, or before the chairman, may be done by, to, or before the vice-chairman (sect. 49 (7)).

The vice-chairman, unless he resigns, or ceases to be qualified, or becomes disqualified, holds office until after the election of a chairman at the next annual meeting of the council; and during that time he continues to be a member of the council, notwithstanding the provisions of the Act of 1933 relating to the retirement of parish councillors at the end of three years (sect. 49 (6)). [171]

If the chairman of the parish council is absent from a meeting of the council the vice-chairman, if present, must preside (Third Schedule, Part IV., r. 3), but this provision should be read as subject to an implied condition that the vice-chairman is not disqualified from presiding over the transaction of the particular business by reason of a special interest in the matter. While r. 3 (2) only requires the vice-chairman to preside if the chairman is absent from the meeting, it would seem that the vice-chairman should preside if the chairman is present at the meeting but is disqualified from presiding, because sect. 49 (7) of the Act of 1933 allows anything authorised or required to be done by, to, or before the chairman of a parish council to be done by, to, or before the vice-chairman.

When presiding at a meeting of the parish council, in the absence of the chairman, the vice-chairman would have a second or casting vote,

in case of an equal division of votes on any question (Third Schedule, Part V., r. 1 (2)).

The right of taking the chair at a parish meeting, conferred on the chairman of the parish council by r. 3 (1) of Part VI. of the Third Schedule to the Act is not apparently extended by sect. 49 (7) of the Act to the vice-chairman of the parish council in the absence or inability of the chairman. This sub-sect. should probably be read as restricted to business of the parish council.

A vice-chairman is not, like a chairman, required to sign a declaration of acceptance of office upon election as vice-chairman. See the terms of sect. 61 (4) of the Act of 1933. [172]

CHAIRMAN OF PARISH MEETING

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See also titles : MEETINGS;
PARISH MEETING.

This title deals with the election, eligibility, rights, powers and duties of the chairman of the parish meeting of a rural parish. These matters have been since June 1, 1934, governed by the L.G.A., 1933 (a), and the references below are to the sections of, or schedules to, that Act. [173]

Who may be Chairman of Parish Meeting.—In a parish with a parish council, the chairman of the parish council, if present, presides as chairman of the parish meeting, provided he is not a candidate for election at the meeting (Third Schedule, Part VI., r. 3 (1)). He is entitled to attend a parish meeting for the parish whether he is or is not a local government elector for the parish; but if not such an elector he is not entitled to give any vote at the meeting, except a casting vote (sect. 77 (2)), though the right of attendance does not apparently extend to a parish meeting for a ward or other part of a parish (sect. 78 (a)).

Although sect. 49 (7) of the Act allows the vice-chairman of a parish council to do anything authorised or required to be done by the chairman, subject to standing orders made by the parish council, it would seem that this provision should be read as restricted to business of the parish council, and that, in the absence of the chairman, the vice-chairman of the parish council is not entitled to act *ex officio* as chairman of the parish meeting. [174]

If the parish has not a parish council, the chairman is elected at the annual assembly of the parish meeting for a term of one year, and under the Act he continues in office till his successor is appointed (sect. 49 (8)). He is eligible for re-election (sect. 58). No qualification is prescribed for the office of chairman, but it would appear that he must be chosen from the persons entitled to attend the parish meeting, that is to say, from the local government electors of

(a) 26 Statutes 295. Before June 1, 1934, the law was contained in the L.G.A., 1894, ss. 19, 45.

the parish (see sect. 47 (1)); see title **PARISH MEETING**. The disqualifications for office set out in sect. 59 of the Act of 1933, which are applicable generally to local authorities, do not apply to the chairman of a parish meeting (sect. 305, "Definition of Local Authority"), nor does sect. 61 require a declaration of acceptance of office to be made by him. [175]

Where the chairman of the parish council, or the chairman of the parish meeting, as the case may be, is absent or unwilling or unable to take the chair, the parish meeting may appoint a person to take the chair, and that person has, for the purpose of that meeting, the powers and authority of the chairman (Third Schedule, Part VI., r. 3 (3)). The chairman thus appointed occupies the chair only during the continuance of the meeting at which he is appointed. [176]

Where the parish meeting is held for a ward or other part of a parish, it would seem that the chairman of the parish council, or the chairman of the parish meeting for the year, as the case may be, can preside only if he is registered as a local government elector in respect of a qualification in that ward or part (see sect. 78 (a)). [177]

In the case of an equality of votes on any question before a parish meeting the presiding chairman has a casting vote (Third Schedule, Part VI., r. 5 (3)). This rule necessarily implies that the chairman may give a first vote on any question, except in the case above referred to, where he is not a local government elector for the parish. [178]

Resignation. Casual Vacancy.—The chairman of a parish meeting may resign his chairmanship by notice in writing, signed by him and delivered to the parish meeting. The resignation takes effect upon receipt of the notice of resignation by the parish meeting (sect. 62 (e)). A casual vacancy in the office of chairman of the parish meeting is filled by the parish meeting, which must forthwith be convened for the purpose (sect. 66 (3)). The person elected to fill the vacancy holds office until the date upon which the person in whose place he is elected would regularly have retired (sect. 68). A retiring chairman of a parish meeting is eligible for re-election (sect. 58). The above provisions apply only to the chairman of the parish meeting of a parish without a separate parish council. [179]

Powers and Duties.—In any case in which a map, plan or other document is deposited with the chairman of a parish meeting, pursuant to the standing orders of Parliament, or of any enactment or statutory order, the chairman is required to receive and retain the document in the manner and for the purposes directed, and to make such memorials or endorsements on, and give such acknowledgments in respect of, the document as may be so directed. A person interested in any such document may inspect and take copies of the same (unless the enactment or order otherwise provides), at all reasonable hours, on payment of one shilling for every such inspection, and of a further sum of one shilling for every hour during which the inspection continues after the first hour (sect. 280). [180]

Any notice, order or other document required or authorised by any enactment or statutory order to be delivered to or served upon a parish meeting must be left with, or sent by prepaid post to, the chairman of the parish meeting (sect. 286 (2)). [181]

In a rural parish not having a separate parish council, the chairman of the parish meeting and the councillor or councillors representing the parish on the rural district council are a body corporate, by the name of

"the representative body," with the addition of the name of the parish, with perpetual succession and power to hold land for the purposes of the parish without licence in mortmain. If, however, the parish is represented on the rural district council by one councillor only, and that councillor is also chairman of the parish meeting, the rural district council must appoint a local government elector (*b*) for the parish to be a member of the representative body of the parish. Unless a person so appointed resigns or ceases to be qualified or becomes disqualified, he holds office for four years, or until the offices of rural district councillor representing the parish and chairman of the parish meeting cease to be held by the same person, whichever first occurs (sect. 47 (3)) (*c*). [182]

If there is no parish council, the chairman of the parish meeting fixes the times and places at which parish meetings shall be held, but ordinarily the parish meeting must assemble at least twice a year (Third Schedule, Part VI., r. 1). He may convene a parish meeting at any time, subject to giving seven clear days' public notice specifying the time and place of the meeting and the business to be transacted thereat (*ibid.*, r. 2 (2)). It is the duty of the chairman to see that the business of the parish meeting is properly conducted, and to preserve order. Where a parish meeting is held for the election of parish councillors he must see that opportunity is given for putting questions to such of the candidates as are present (*ibid.*, r. 4 (2)). A question to be decided at a parish meeting must, in the first instance, be decided by a majority of those present and voting, and the decision of the person presiding at the meeting as to the result of the voting is final unless a poll is demanded. A poll may be demanded before the conclusion of a meeting, on any question arising thereat; but it cannot be taken unless either the presiding chairman consents, or it is demanded by not less than five, or by one-third, of the local government electors present, whichever is the less (*ibid.*, r. 5). [183]

For the purpose of obtaining sums necessary to meet the expenses of the parish meeting of a parish not having a separate parish council, the chairman of the parish meeting may issue precepts to the council of the rural district in which the parish is situate (s. 193 (6)). See title PARISH MEETINGS. [184]

(*b*) See title LOCAL GOVERNMENT ELECTOR.

(*c*) These provisions are taken from Art. 7 of the Overseers Order, 1927 (14 Statutes 772), which, though not repealed by the L.G.A., 1933, only applies to rural parishes to which s. 19 (6) of the L.G.A., 1894 (which sub-section was repealed by the L.G.A., 1933), applies.

CHAIRMAN OF RURAL DISTRICT COUNCIL

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See also titles : ACCEPTANCE OF OFFICE ;
DISTRICT COUNCILLOR ;
MEETINGS ;
RURAL DISTRICT COUNCIL.

The references below are, except where otherwise specified, to the sections of, and the schedules to, the L.G.A., 1933 (*a*).

Preliminary Observations.—The chairman of an R.D.C. enjoys the same status in the county as the chairman of an U.D.C., but his duties are in general confined to presiding over the council meetings, and unlike the chairman of a large urban district or the mayor of a borough he does not so frequently take a prominent part in the social activities of the district. Unlike the mayor, he cannot be paid by the council an allowance to assist him in meeting the expenses of his year of office.

The law was formerly contained in sects. 22, 24, 46 and 59 of the L.G.A., 1894, but, as from June 1, 1934, these sections were repealed by the L.G.A., 1933 (*a*), and replaced by the provisions of that Act which are referred to later. One important alteration of the law is that the chairman now continues in office until his successor has accepted office as chairman (*b*), unless he has resigned, ceased to be qualified or become disqualified.

The chairman, by virtue of his office, is a justice of the peace for the county or counties in which the rural district is situate, but before acting as such he must take the Oath of Allegiance and the Judicial Oath which are required by law to be taken by a justice of the peace for that county, unless at the date at which he becomes entitled to act as chairman, he is already a justice of the peace for that county, and has taken the oaths required by law to enable him to act as such (*c*). [185]

Qualification.—The chairman must be a councillor or a person qualified to be a councillor of the district, so that a person not a councillor can be selected as chairman, provided he is qualified to be a councillor (*d*) (for qualification of a councillor, see title DISTRICT COUNCILLOR).

The chairman of a district council is required to make a declaration of acceptance of office within two months from the date of his election. This declaration is in addition to the declaration on acceptance of

(*a*) 26 Statutes 295 *et seq.*
(*c*) S. 33 (5).

(*b*) S. 33 (3).
(*d*) S. 33 (1).

office as councillor (*e*). As to the mode of making the declaration, see the titles ACCEPTANCE OF OFFICE and DISTRICT COUNCILLOR.

Failure to make the prescribed declaration renders the office vacant (*f*). [186]

Method of Election.—The procedure for the election of chairman is not laid down by statute except that the election is to be “the first business” transacted at the annual meeting of the council (*g*), which under r. 1 of Part III. of the Third Schedule to the L.G.A., 1933, is held on or as soon as convenient after April 15 of each year.

In view of this express statutory direction, it is thought that the election of the chairman should precede the confirmation of the minutes of the last council meeting.

In accordance with ordinary practice, each candidate (*h*) should be proposed and seconded, and the vote is then taken by show of hands.

Voting by ballot is not therefore permissible, and if more than one person is nominated the name of each person nominated should be voted upon separately. The order in which the names are put to the meeting may not be material, but as any nomination after the first would be an amendment of a motion it is thought that the last nomination should be voted upon first. This course was taken in *R. v. Rowlands, Ex parte Beesley (or Beasley) (i)*.

Since the chairman holds office until his successor has accepted office (see “Period of Office” below), the outgoing chairman can take the chair at the election of a successor if he himself is not a candidate for re-election. In that event, he would be disqualified for acting as a returning officer in his own cause and presiding at the election (*j*).

A retiring chairman is eligible for re-election as chairman (*k*). [187]

Period of Office.—An R.D.C. is required as its first business to elect a chairman at the annual meeting, which is to be held on or as soon as conveniently may be after April 15 in every year (*l*). The chairman will continue in office until his successor becomes entitled to act as chairman, unless he resigns, or ceases to be qualified or becomes disqualified (*m*). The period of office may extend beyond the date of the election of the chairman’s successor as the latter cannot act until the declaration of acceptance has been made (*n*). The effect of this is that he is entitled to take the chair until his successor has accepted office, unless, as already indicated, he is a candidate for re-election as chairman. This right holds good, even if the chairman is a councillor, and was not re-elected as such at the election of councillors which preceded the annual meeting, and retired therefore as a councillor in the first moment of April 15 (*o*).

A chairman may resign his office by a notice delivered to the clerk of the council, and the resignation takes effect upon the receipt by the clerk of the notice (*p*). [188]

(*e*) S. 61 (1).

(*g*) S. 33 (2).

(*h*) Sched. III., Part III., r. 6.

(*i*) [1910] 2 K. B. 930 ; 20 Digest 139, 1143.

(*j*) See *ante*, p. 45, note (*h*).

(*k*) S. 58.

(*l*) Sched. III., Part III., r. 1 (2).

(*m*) S. 33 (3).

(*o*) S. 33 (4).

(*f*) S. 61 (2).

(*n*) S. 61 (1).

(*p*) S. 62.

Disqualification for Holding Office.—The position which has arisen as from June 1, 1934, through the repeal of sect. 46 of the L.G.A., 1894, by the L.G.A., 1933, and the substitution for sect. 46 of the provisions of sect. 59 of the latter Act as to disqualification for office is described in the title CHAIRMAN OF URBAN DISTRICT COUNCIL, *post*, pp. 60, 61. The chairman of an R.D.C. is also in the position there described, as respects his obligation to disclose his interest in any contract or other matter, which may come before his council for consideration and to refrain from taking part in any discussion and from voting.

A chairman of an R.D.C. is also liable to vacate his office by a failure, throughout a period of six consecutive months, to attend a meeting of the council; see title DISTRICT COUNCILLOR.

The various disqualifications for holding the office of chairman will be found set out in the title DISTRICT COUNCILLOR. [189]

Casual Vacancy.—A casual vacancy in the office of chairman is to be filled at the next ordinary meeting of the council after the vacancy occurs, or if that meeting is held within fourteen days after that date then at the next following ordinary meeting. The procedure is the same as for an ordinary election of a chairman (*q*).

A meeting of the council for the election may be convened by the clerk of the authority (*r*).

The person elected to fill the casual vacancy holds office until the person in whose place he is elected would have retired (*s*). [190]

Powers and Duties.—The chairman of an R.D.C. may act in the office for the purpose of taking a declaration of acceptance notwithstanding that he may not at the time have made his own declaration (*t*); and he may call a meeting of the council at any time (*a*). The signature of the minute book by a presiding chairman enables the minutes of the proceedings of the council to be received in evidence without further proof (*b*).

The chairman will naturally depend upon the clerk to the council for advice and assistance. He should make himself fully cognisant with the standing orders of the council, the usual rules of debate and the conduct of meetings generally. He should, if possible before each council meeting, go through the agenda paper with the clerk, and examine the reports of the committees and officials so that he may have full knowledge of all the matters which will have to be dealt with. As a matter of practice, however, many matters are dealt with by the chairman between meetings, subject to confirmation by the council of the action taken by him.

Any person presiding over a meeting of a district council has a second or casting vote in the case of an equality of votes (*c*). See, generally, as to duties at meetings, title MEETINGS.

As a rule the chairman is *ex-officio* member of all committees, but it depends entirely on the standing orders or specific resolutions to that effect; in the absence of such he is only a member of the committees to which he is appointed.

(*q*) S. 66 (1).

(*s*) S. 68.

(*a*) Sched. III., Part III., r. 2 (1).

(*b*) Sched. III., Part V., r. 3 (1).

(*c*) R. 1 (2).

(*r*) S. 66 (2).

(*t*) S. 61 (1).

Vice-Chairman.—The appointment by an R.D.C. of a vice-chairman is optional, but he must be selected from among the members of the council, and his office gives him no right to act as a justice of the peace. The appointment is made under sect. 34 of the L.G.A., 1933, and the vice-chairman of an R.D.C. is subject to the same provisions as the vice-chairman of an U.D.C. The effect of these is given in the title CHAIRMAN OF URBAN DISTRICT COUNCIL at p. 61. [191]

CHAIRMAN OF URBAN DISTRICT COUNCIL

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See also titles : ACCEPTANCE OF OFFICE ;
DISTRICT COUNCILLOR ;
MEETINGS ;
URBAN DISTRICT COUNCIL.

The references below, except where otherwise specified, are to the sections of, or schedules to, the L.G.A., 1933 (a).

Preliminary.—In most countries, the chairman of a council like that of an urban district in England would be called the Mayor. He is the chief citizen of his town, be it large or small. But the chairman has no insignia of office, and no title, like "His Worship the Mayor," though many towns which are only urban districts are larger than many ancient boroughs, or even some modern boroughs. There are quite a number of boroughs with less than 10,000 inhabitants, as there are a number of urban districts with more than 20,000. But the mayor of a borough, however small, has a ceremonial position which is not possessed by the chairman of the council of an urban district, however large, and while the mayor may be paid an allowance to assist him in meeting the expenses of his office, the chairman of an urban district council cannot be remunerated by the council. A chairman has practically no ornamental functions, although he has in effect many useful ones. One external distinction, however, he does possess, for he is during his term of office a justice of the peace for the county or counties in which his district is situated. But he cannot act as a magistrate until he has taken the Oath of Allegiance and the Judicial Oath required by law to be taken by a justice of the peace for the county or counties, on the commission of the peace of which he is placed, unless he is already a justice of the peace for that county and has taken the oaths required by law to enable him to act as such (L.G.A., 1933, s. 33 (5)). Thus, if he is already a magistrate for the county when elected chairman (for example, if he is elected for a second consecutive year) he need not take the oaths again.

The law was formerly contained in sects. 22, 46 and 59 of the L.G.A., 1894, and Sched. I. to the P.H.A., 1875 (b), but as from

(a) 26 Statutes 295.

(b) 10 Statutes 792, 804, 814 ; 13 Statutes 765.

June 1, 1934, these provisions were repealed by the L.G.A., 1933, and replaced by the provisions of that Act which are referred to later. One important alteration of the law is that the chairman, under sect. 33 (3) of the new Act, continues in office until his successor has accepted office as chairman, unless he has resigned, ceased to be qualified or become disqualified. [192]

Election and Period of Office.—The election of the chairman is the first business to be transacted at the annual meeting of the council, which must be held on or as soon as convenient after April 15. The council may elect a chairman from among the councillors or from outside their own number, but he must be qualified to be a councillor, and he must retain his qualification throughout his year of office (sect. 33). As to the qualification of a district councillor, see the title DISTRICT COUNCILLOR.

The chairman continues in office, unless he resigns or ceases to be qualified or becomes disqualified, until his successor becomes entitled to act, even though his term of office as a councillor has expired (L.G.A., 1933, sect. 33 (3)). Thus, if a chairman who was a councillor is defeated in the annual election, held at the beginning of April, and so ceases to be a councillor, he nevertheless remains chairman until the incoming chairman has accepted office, and may give a casting vote in the choice of his successor (Third Schedule, Part V., r. 1 (2)). The retiring chairman is eligible for re-election (*ibid.*, s. 58). But if the retiring chairman should be a candidate for re-election as chairman, he would be disqualified from presiding over the proceedings at the election of a chairman (c).

The votes must be taken by a show of hands (Third Schedule, Part III., r. 6) and voting by ballot is not therefore permissible.

The chairman must sign a declaration of acceptance of office before he acts as chairman. In order that this may not cause a deadlock, it is provided that if he fails so to sign within two months from the date of his election as chairman, then the office becomes vacant (sect. 61). [193]

Disqualification for Office.—Formerly under sect. 46 of the L.G.A., 1894 (d), a person was disqualified for being chairman of an U.D.C. if he was concerned in any bargain or contract entered into with the council, or participated in the profit of any such bargain or contract, or of any work done under the authority of the council. But the provision in sect. 59 of the L.G.A., 1933, as to disqualification for holding office, no longer disqualifies a chairman for holding office by reason of interest in a bargain or contract or participation in profit arising from it or from work done for the council. By sect. 76 of the Act of 1933, the chairman is required to disclose his interest in any contract or other matter which may come before his council for consideration, and is prohibited from taking part in the consideration or discussion of it, or from voting on any question with respect to it.

A description of the various disqualifications imposed by sect. 59 of the Act of 1933 will be found in the title DISTRICT COUNCILLOR, but that section is not drafted similarly to sect. 46 of the L.G.A., 1894 (e), because it does not refer to the chairman of a district council by that

(c) See *ante*, p. 45, note (h).

(d) 10 Statutes 804.

(e) *Ibid.*

name. Such a chairman, whether elected from among the councillors or outside the council, would however be "a member of a local authority" within the meaning of sect. 59 of the Act of 1933, and would be subject to the disqualifications for holding office imposed by the section.

A chairman vacates his office under sect. 63 (1) of the L.G.A., 1933, if he fails, throughout a period of six consecutive months, to attend a meeting of the U.D.C., unless the failure is due to some reason approved by the council. But proviso (a) to the sub-section allows attendance as a member at a meeting of a committee or sub-committee of the council, or at a meeting of a joint committee, joint board or other body to which any functions of the council have been delegated or transferred, to count as attendance at a meeting of the council. For a fuller description of this section see the title DISTRICT COUNCILLOR. [194]

Vice-Chairman.—The council are not obliged to elect a vice-chairman, but may do so if they think fit. It is the usual practice to appoint a vice-chairman in order to provide for the absence of the chairman. Unlike the chairman, a vice-chairman may not be chosen from outside the council. He must be a councillor. He holds office until after the election of the chairman at the annual meeting which follows next after his election (sect. 34). The vice-chairman may as a rule do everything that a chairman may do, except act as a justice of the peace, but the standing orders of the council may limit his powers. Rule 3 (2) of Part III. of the Third Schedule to the L.G.A., 1933, requires that the vice-chairman, if present, shall preside at any meeting of the council from which the chairman is absent, but this should be read subject to an implied condition, that the vice-chairman is not disqualified from presiding over the transaction of particular business by reason of a special interest in the matter. It will be seen that r. 3 (2) only requires the vice-chairman to preside, if the chairman is absent from the meeting, but as sect. 34 (2) of the Act allows anything to be done by, to, or before the vice-chairman which is authorised or required to be done by, to, or before the chairman, it would seem that the vice-chairman should preside, if the chairman is present at the meeting, but is disqualified from presiding.

A vice-chairman is not, like a chairman, required to sign a declaration of acceptance of office upon election as vice-chairman; see the terms of sect. 61 (1) of the L.G.A., 1933. [195]

Casual Vacancy.—If a casual vacancy occurs in the chairmanship, a new chairman must be elected at the next ordinary meeting of the council, except that in a case where such meeting falls to be held within fourteen days from the occurrence of the vacancy then the election may be postponed until the following ordinary meeting. A special meeting to elect a chairman in case of such a vacancy may be convened by the clerk, without further authority from the council (sect. 66 (2)).

The person elected to fill a casual vacancy holds office until the person in whose place he is elected would have retired (s. 68). [196]

Powers and Duties of Chairman.—The chairman has the right to convene a special meeting of the council at any time on giving three clear days' notice to be published at the offices of the council. He can be compelled to call such a meeting on the requisition of five

members, or of one-fourth of the councillors, whichever is less (Third Schedule, Part III., r. 2). [197]

The chairman has to preside at all meetings of the council, if he is present, but he should not do so if he is disqualified by interest in the matter from presiding. In his disqualification or absence, the vice-chairman will normally preside; see *supra*. If both are absent, then a chairman for that occasion only is to be elected by the councillors present from their own number (Third Schedule, Part III., r. 3).

In case of equality of votes, any person presiding may give a second or casting vote (Third Schedule, Part V., r. 1 (2)). [198]

Minutes of every meeting must be entered in the minute book, and must be signed either at the same or at the next meeting "by the person presiding thereat." In practice the minutes are usually signed at the next meeting. When so signed, the minutes are evidence without further proof (Third Schedule, Part V., r. 3). It should be noted that if the signing of the minutes should be delayed until after the next meeting, they are not strictly evidence except on being proved, for example, by the oath of the clerk, which may cause inconvenience. [199]

Outside the council chamber, a chairman has few duties or powers as such beyond the privilege of acting as a magistrate. But one important duty arises if the council should promote a bill in Parliament, for instance, to acquire new waterworks or to take over a gas company. After the bill has been deposited in Parliament and advertised in the form prescribed by the Ninth Schedule, a public meeting of the local government electors must be held. The chairman of the council is to preside at this meeting unless he is unable or unwilling to do so, in which case the council appoint another person to preside. The presiding chairman must at the opening of the meeting give such explanation of the bill as he thinks expedient. As a rule he reads a statement prepared by the clerk. The question whether the bill shall be promoted must be put by the chairman either in one resolution, or in separate resolutions applying to different parts of the bill. If separate resolutions are resorted to, care must be taken that together they cover the whole bill. If the meeting resolve to request separate resolutions, the chairman must adopt that course. The decision of the meeting is final unless a poll is demanded. The council may demand a poll if the vote of the meeting is against the bill. Otherwise a poll may be demanded by written requisition delivered to the chairman within seven days, signed by not less than one hundred electors, or one-twentieth of the electorate if the district is so small that it has less than 2,000 electors (Ninth Schedule). [200]

A public meeting of electors or ratepayers in an urban district is not legally required for any purpose other than the promotion of a Parliamentary bill. But if the council desire to establish a market, a meeting of owners and ratepayers must be held, under P.H.A., sect. 166, and Sched. III. (f), when the procedure is similar, but a poll may be demanded at the meeting—not afterwards—by any one owner or ratepayer.

As a matter of custom and courtesy, the chairman ranks as the first townsman, and is usually invited to public functions. On such occasions he is supported by the clerk if required. [201]

When any documents are executed under the seal of the council,

the signature of the chairman, as well as that of the clerk, is often required by a standing order of the council.

In case of disorderly conduct by a member, the chairman may ask the council for authority to have the offending member removed. The decision rests not with the chairman, but with the council, on the common law principle that every deliberative body has power to protect itself in its own deliberations. If the council authorise the removal of a member and he refuses to leave, the police should be called in. [202]

Under the usual Standing Orders and general rules of debate, the chairman has no "right of summing up" to close a debate in council. The last word rests with the member who has the "right to reply" as the proposer of a motion, and then the question should be put without comment from the chair. [203]

CHAMBERLAIN

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See also titles : CITY OF LONDON;
TREASURER.

IN THE CITY OF LONDON

The City Chamberlain of London is one of the most important officers nominated by the Common Hall or Assembly of the Lord Mayor, aldermen and liverymen of the several Companies of London in Common Hall assembled.

The office is one of great antiquity. In early times, the Chamber of London, over which the Chamberlain presides, was almost a department of state. In 1404 it was ordered that the Chamberlain be elected immediately after the election of sheriffs on the Feast of St. Matthew (September 21), and since 1475 he has been elected by the livery, except between 1683 and 1687, when Charles II. suspended the City's charters and himself nominated the Chamberlain.

In 1666, the Chamberlain was appointed Receiver of the Poll Tax. He was, in fact, the medium through whom Sovereigns borrowed money from the City.

In the time of the Stuarts, the Chamber of London performed functions which nowadays would be carried out by the Bank of England. For instance, the Coal Tax for rebuilding St. Paul's Cathedral, and sums borrowed for building various public buildings after the Great Fire were all paid into the Chamber.

For nearly a century, the Chamberlain on appointment has entered into a deed of covenant with the corp'n. which defines his powers and duties.

The City Chamberlain is vested with considerable responsibilities. He is the treasurer or banker of the City and is in charge, not only of the revenue from the private estates of the City Corp'n., known as the

City's cash, but also of all the funds of the Corpn. The City's cash is used for the payment of part of the salaries of officials, and the emoluments of certain high officers and their clerks are not, therefore, entirely borne by the rates. This fund is also used for various expenses of the corp., and the entertainment of foreign potentates and distinguished personages is a charge on the City's cash and not on the citizens.

Cheques or warrants in payment of the City's debts are drawn on the Chamberlain and not on an ordinary banker.

The Chamberlain exercises jurisdiction over apprentices in the City and holds a court for hearing disputes and complaints relating to them. The Court of the Chamberlain consists of the Chamberlain himself and the Comptroller, who is vice-chairman. The court is in session throughout the year except during August, and summonses are granted on the payment of one shilling. All disputes between masters and apprentices can be heard and determined by this court. The parties may be represented by counsel and solicitors, and there is a right of appeal to the Mayor's and City of London Court, where the appeal is heard before the Recorder and a common jury. Decisions of the Chamberlain's Court have been taken to the superior courts and upheld by His Majesty's judges and the jurisdiction of this ancient court has been preserved by modern statutes.

The Chamberlain is also Keeper of the Freemen's Roll and admits persons of both sexes to the freedom of the City.

He sits with the Town Clerk and other high officials at all meetings of the Court of Common Council and is frequently called upon to advise the court upon questions which may arise as to admissions to the freedom of the City.

The Chamberlain is the spokesman of the City Corpn. when distinguished persons are admitted to the City's Roll of Freemen, and it is his privilege as representative of the livery and the freemen to offer the right hand of fellowship to the new honorary freeman.

The Chamberlain, Town Clerk and Comptroller are the three trustees for the corp. and the custodians of the City's seal.

The corp. appears to have no power to alter the constitution of the office of Chamberlain, but it can frame regulations for the conduct of the Chamber and, with the concurrence of the Chamberlain, can make new dispositions of the revenue.

The salary attaching to the office is £3,000 a year and the Chamberlain is elected or re-elected annually on Midsummer Day by the Liverymen of one year's standing at least, who are also Freemen, in the Court of Common Hall. [204]

IN THE PROVINCES

Several provincial cities formerly had Chamberlains, but to-day in practically all of them the office has either become obsolete or the duties appertaining to it are purely of a ceremonial character.

In Worcester, for example, the office of Chamberlain is an annual appointment and is always filled by a councillor, not an alderman, who never retains the office for more than two years. The office has no salary or perquisites. The Chamberlain is responsible for the fabric of the guild and public halls and the letting of the latter for social and other occasions is in his charge. The City Chamberlain is always the chairman of the Property Committee of the council, which supervises the management of the property owned by the corp. In olden

times there were always two Chamberlains in Worcester who kept the city purse and were responsible for arranging and paying for the many banquets and festivities with which the corpⁿ. regaled themselves in more spacious days.

In Gloucester, the City Chamberlain is, in effect, the city council's estate agent. The office is held by one of the council's officers. At one time, the city surveyor held this office, and at the present time it is held by the city treasurer. The salary attaching to the office is £100 a year. The Chamberlain is appointed on November 9 in every year, and his duties include advising and assisting the council and its committees and officers in dealing with the property of the corpⁿ., having charge of the letting arrangements and sale of such property, and the preparation of plans, specifications and estimates of works undertaken or proposed to be undertaken by the corpⁿ.

In Exeter, the Charter of Queen Elizabeth provided for the election of a Chamberlain who should have a seal of office and exercise the same powers as the Chamberlain of London and "plead in that name in all our courts in all matters touching the city or orphans and receive and safely keep the revenues of the city to the use of the Chamber and annually account for these." He was further charged with the safe keeping of the city's records and charters, and with the inspection and keeping in repair of all the city's property, and it was provided that he should be "wyse and lerned and of great modestie and sobrietie." The last person to hold the office in Exeter was a Mr. Ellicombe who gave evidence at an inquiry held in 1833, prior to the passing of the Municipal Corporations Act, 1835.

In Plymouth the Chamberlain originally dealt with the corporate estates and made all arrangements for ceremonial occasions. The office is now held with that of the city treasurer, and the duties formerly belonging to it have been divided between the town clerk, the city treasurer and the city surveyor.

Several interesting duties were formerly attached to the office of the City Chamberlain of Coventry. He used to collect the tolls at the weekly market and at the annual great fair, and he used also to mark the animals belonging to the freemen of the city, who formerly enjoyed the privilege of turning out a specified number of animals on to the city commons. He also had duties in connection with cattle impounded for being improperly on the commons, *i.e.* cattle which either did not belong to freemen, or cattle placed on the commons in excess of a particular freeman's "stint." All these duties have now ceased. The sole duty of the present City Chamberlain is to wear his traditional uniform (which is of a similar pattern to that which was worn in medieval times) and to walk with the mace-bearer, the sword-bearer and the city crier at the head of the procession, whenever the mayor goes in state. [205]

CHAPELS

See CEMETERIES; PRIVATE STREETS; RATING OF SPECIAL PROPERTIES.

CHAPLAINS

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See also titles :

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MENTAL HOSPITALS ;

POOR LAW INSTITUTIONS ;
RELIGIOUS INSTRUCTION IN SCHOOLS.

Burial Grounds.—Sect. 15 of the Burial Act, 1852 (*a*), which allows a burial board to appoint necessary officers, did not cover the appointment of a chaplain for a burial ground, because sect. 32 of that Act (*b*) reserved the right of performing the burial service in a burial ground for a parish or parishes, to the incumbent or minister of the parish, or each of the parishes, as the case may be, as from the consecration of the burial ground. Later, sect. 1 of the Burial Laws Amendment Act, 1880 (*c*), allowed notice to be given to the incumbent that it was intended that a burial should take place without the performance of the burial service according to the rites of the Church of England, but sect. 5 of the Act gave the incumbent a right to receive the like fee, as if the burial service of the Church of England had been performed. This right was, however, abolished by sect. 3 (4) of the Burial Act, 1900 (*d*), as respects any burial ground provided after July 10, 1900, and as respects any then existing burial ground on July 10, 1915, at latest, and fees were then to be paid only for services rendered by an incumbent.

All burial authorities were to frame, subject to the Home Secretary's approval, tables of fees to be received by them in respect of services rendered by a minister of religion (sect. 3 (1)), and these fees are to be collected by the burial authority and paid over to the ministers concerned. But the Act of 1900 did not repeal the incumbent's right to perform the burial service in the consecrated part of a burial ground, and a burial board, or council exercising the powers of a burial board, have still no authority to appoint a chaplain at their burial ground. The repeal by the L.G.A., 1933, of the power to appoint a clerk and provide offices for burial business conferred by sect. 15 of the Burial Act, 1852 (*e*), does not alter the position.

Under sect. 32 of the Burial Act, 1852 (*f*), the incumbent or minister is to perform the burial service in a burial ground, either by himself and his curate, or by such duly qualified persons as he may authorise.

(a) 2 Statutes 194.

(c) *Ibid.*, 242.

(e) *Ibid.*, 194.

(b) *Ibid.*, 201.

(d) *Ibid.*, 249.

(f) *Ibid.*, 201.

If any question arises among the incumbents of two or more parishes having a common burial ground, as to the performance of the burial service by a chaplain to be paid by them or out of fees payable to them, the bishop shall confirm any arrangement made by the majority of such incumbents, or, in the case of equal numbers, made by one-half of them, and any arrangement so confirmed will be binding upon all of them (*g*).

A chaplain authorised by the whole of the incumbents or installed by the bishop's confirmation of such an arrangement as aforesaid, is the deputy of each incumbent, and the fees paid to the burial board in respect of services rendered by the chaplain will be paid over to the incumbent entitled thereto as provided by the Burial Act, 1900 (*h*).
[206]

Cemeteries under P.H. (Interments) Act, 1879 (*i*).—Originally a council which provided a cemetery under this Act was required by sect. 27 of the Cemeteries Clauses Act, 1847 (*k*), with the approval of the bishop, to appoint a clerk in holy orders to officiate as chaplain in the consecrated part of the cemetery, but this power was repealed by sect. 7 of the Burial Act, 1900 (*l*), as respects any cemetery provided under the Act of 1879. Sect. 7 of the Act of 1900 also placed the incumbent of any ecclesiastical parish situate wholly or partly within the area for which such a cemetery is provided under the same obligation to perform funeral services in the cemetery as he is to perform such services in a burial ground provided under the Burial Acts (*m*) and accordingly the provisions of the Burial Acts above set out apply to the cemetery. [207]

Other Cemeteries.—For cemeteries provided under a local Act applying the provisions of the Cemeteries Clauses Act, 1847 (*n*), the persons authorised to construct the cemetery must, with the approval of the bishop of the diocese, appoint a clerk in holy orders to officiate in that part of the cemetery (if any) which is consecrated. The chaplain is to be licensed by, and subject to the jurisdiction of, the bishop, who may revoke the licence and remove the chaplain for any cause which appears to him to be reasonable (*o*).

The chaplain must, when required, perform the burial service over bodies brought to be buried in the consecrated part of the cemetery which are entitled to be buried in consecrated ground according to rites and usages of the Established Church (*p*), though with his consent, other clergymen of the Established Church may officiate if requested so to do either by the executor of the will of the deceased person or by the person having charge of the burial (*q*).

The stipend of the chaplain is to be such as is approved by the bishop of the diocese and is payable half-yearly, and if any chaplain die or

(*g*) S. 39 ; 2 Statutes 203.

(*h*) S. 3 (1), (3) ; *ibid.*, 249.

(*i*) 13 Statutes 796.

(*k*) 2 Statutes 261.

(*l*) *Ibid.*, 251.

(*m*) Burial Act, 1900, ss. 7, 11 ; 2 Statutes 251, 252.

(*n*) 2 Statutes 255.

(*o*) Cemeteries Clauses Act, 1847, s. 27 ; 2 Statutes 261.

(*p*) *Ibid.*, s. 28 ; 2 Statutes 261.

(*q*) *Ibid.*, s. 29 ; 2 Statutes 262. If there is no chaplain the consent of the bishop of the diocese must be obtained. It has been suggested that this section is repealed by implication by the Burial Act, 1900, s. 7 (2 Statutes 251), so far as it relates to cemeteries of local authorities ; see Brooke Little on Burials, 3rd ed., p. 323 ; and see Halsbury's Laws of England, 2nd ed., Vol. 3, p. 569, note (*s*).

resign in the interval between the half-yearly days of payment, a proportionate part of the half-yearly payment shall be paid to him or to his executors or administrators (*r*). Any stipend due and remaining unpaid for a space of thirty days is recoverable by action (*s*).

In cemeteries where there is still a chaplain, burials in the consecrated part are to be registered in register books to be provided by the proprietors of the cemetery and kept for that purpose by the chaplain according to the laws in force by which registers are required to be kept by the rectors, vicars or curates of parishes or ecclesiastical districts in England and Wales (*t*). [208]

Institutions for Defectives.—There is no statutory power to appoint chaplains, *eo nomine*, to institutions for mental defectives, but councils of counties and county boroughs which have established such institutions are empowered, and it is their duty to appoint officers to assist them in the performance of their duties, subject to the provisions of the Mental Deficiency Act, 1913, and to regulations made by the Secretary of State (*u*).

The committee of the council to which the exercise of the powers of the council under the Act has been referred or delegated (*a*), must submit to the Board of Control arrangements for religious services and instruction according to the religious persuasion of the patients in the institution, and arrangements approved by the board must be observed (*b*). Such arrangements may, and usually do, provide for the appointment of a chaplain or chaplains. [209]

Mental Hospitals.—It is the duty of the visiting committee of every mental hospital to appoint a chaplain who must be in priest's orders and licensed by the bishop of the diocese (*c*). It is not necessary for the chaplain to reside in the mental hospital (*d*). The salary of the chaplain is to be fixed by the committee (*e*).

The chaplain of a mental hospital or his substitute approved by the committee must perform divine services according to the rites of the Church of England on every Sunday, Christmas Day and Good Friday in the chapel of the mental hospital or in some convenient place belonging to the mental hospital, and must perform divine service and such other services according to the rites of the Church of England as the committee direct and at such times as they appoint. The licence of the chaplain of the mental hospital is revocable by the bishop (*f*), but the visiting committee may dismiss him without the consent of the bishop (*g*).

The visiting committee may appoint a minister of any religious persuasion to attend patients in the mental hospital of the religious persuasion to which the minister belongs (*h*).

(*r*) Cemeteries Clauses Act, 1847, s. 30 ; 2 Statutes 262.

(*s*) S. 31 ; 2 Statutes 262.

(*t*) S. 32 ; *ibid.*, 262.

(*u*) S. 30 (*g*) ; 11 Statutes 178.

(*a*) S. 28 (2) ; *ibid.*, 177.

(*b*) Mental Deficiency Act Provisional Regulations, 1914, Reg. 119. For further provisions as to facilities for religious instruction, see Mental Deficiency Act, 1913, s. 17 ; 11 Statutes 172.

(*c*) Lunacy Act, 1890, s. 276 (1) (*a*) ; 11 Statutes 111.

(*d*) *R. v. Hereford County Council* (1890), 63 L. T. 245 ; 19 Digest 548, 4061.

(*e*) Lunacy Act, 1890, s. 276 (5) ; 11 Statutes 112.

(*f*) *Ibid.*, s. 277 (1), (2) ; *ibid.*, 112.

(*g*) *Ibid.*, s. 276 (3) ; *ibid.*, 111.

(*h*) *Ibid.*, s. 276 (2) ; *ibid.*, 111.

A paid chaplain to a mental hospital and a paid minister attending patients in the hospital is an established officer within the meaning of the Asylums Officers' Superannuation Act, 1909 (*i*). The Act (sect. 20) repealed the provisions of the Lunacy Act, 1890, as to pensions (sects. 280—282), and substituted the other provisions described in the title **SUPERANNUATION.** [210]

Mental Hospital Burial Grounds.—If the visiting committee of a mental hospital provide a new burial ground for the burial of patients and officers who die in the hospital, and procure the consecration of such ground, they may also provide for the appointment of a chaplain of the new burial ground (*k*). The appointment of a chaplain is not authorised if a part only of a new burial ground is consecrated, or if an existing burial ground is enlarged. [211]

Public Institutions in General.—A clergyman of the Church of England may be licensed by the bishop of the diocese in which any chapel belonging to a college, school, hospital, asylum or public or charitable institution is situate, whether the chapel is consecrated or unconsecrated, to serve such chapel and administer the sacrament of the Lord's Supper and to perform such other offices and services, other than the solemnisation of marriage, as shall be specified in the licence. Such a licence may be revoked by the bishop at any time (*l*).

The clergyman so licensed is not, in the performance of the specified offices and services, subject to the control of the incumbent of the parish (*l*), and he may, subject to the direction of the ordinary, dispose of offertories and alms collected in the chapel (*l*).

The P.H.A., 1875 to 1932, contain no special provision for the appointment by the local authority of chaplains at hospitals provided under those Acts, but the provisions above mentioned would allow the council to arrange for the licensing by the bishop of a suitable clergyman, who would then be appointed by the council as an officer under sect. 106 or sect. 107 of the L.G.A., 1933. [212]

Poor Law Institutions.—The religious instruction of the inmates of workhouses is one of the matters to be provided for in the management of workhouses, including any house in which poor persons are lodged and maintained, or any house or building used by a public assistance authority for the reception, employment, classification or relief of poor persons, and the term "officer" as used in the Poor Law Act, 1930, includes any clergyman who is for the time being employed in any county or county borough in the carrying of the Act into execution (*m*).

The Minister of Health may by order direct the public assistance authority to appoint a chaplain at a poor law institution (*n*). A Roman Catholic or Nonconformist clergyman to conduct religious

(*i*) 11 Statutes 152 *et seq.* As to the rights of established officers under this Act, see title **SUPERANNUATION.** A chaplain may be liable to pay contributions, and be entitled to benefits both under the Act referred to and under the Clergy Pensions Measures, 1926—1928; 6 Statutes 261 *et seq.*

(*k*) Lunacy Act, 1890, s. 253 (2); 11 Statutes 104. The words of the section are "for the appointment of a chaplain therein," which would appear to mean the appointment of a clerk in Holy Orders of the Established Church to officiate at interments in the new burial ground.

(*l*) Private Chapels Act, 1871; 6 Statutes 250.

(*m*) S. 163; 12 Statutes 1047.

(*n*) S. 10; 12 Statutes 974; *R. v. Braintree Union Guardians* (1841), 1 Q. B. 130; 19 Digest 548, 4063.

services at a poor law institution would not be appointed under the provision directing a chaplain to be appointed, but may be appointed by the council as an officer of the institution (o).

The Minister of Health has ordered that every council of a county or county borough, or combination of councils, or joint committee of combined councils discharging poor law functions, shall appoint a chaplain at every establishment provided by them for the reception and maintenance of the poor (p). All such chaplains are senior poor law officers within the meaning of the order (q).

This provision refers only to Church of England chaplains, and no chaplain may hold office unless the written consent of the bishop of the diocese to his appointment is produced (r). The council may, however, appoint such other officers (including religious instructors) as they may think necessary (s).

Provision is made in the Poor Law Act, 1930, for the religious instruction of inmates of workhouses of all creeds (t), and though no specific authority is given by the Act for the holding of religious services of any denomination in a workhouse or for the allocation of any part of the premises for those purposes, the provision of such services and accommodation is clearly contemplated and is one of the functions of the poor law authority (u).

Every chaplain and duly appointed religious instructor must in accordance with arrangements made by the management committee read prayers morning and evening and preach sermons in the establishment to which he is appointed (a). Unless the management committee otherwise direct, divine service is to be conducted in the establishment every Sunday, Good Friday and Christmas Day (b). Prayers and divine service must be attended by all inmates except sick persons too infirm to attend, persons of unsound mind, infants and young children, and those exempted by statute or by the direction of the committee (b). The exemption by statute is contained in sect. 72 (1) of the Poor Law Act, 1930 (c), which requires that no inmate of a workhouse or separate school shall be obliged to attend any religious service which may be celebrated in a mode contrary to his religious principles.

The chaplain or religious instructor must also attend at the establishment whenever he is sent for by the master in the exercise of any duty imposed upon him (a). He must record the date of his attendances in a book to be laid before the house committee at each meeting, and must also enter in the book any matter which he may think it desirable to report for their consideration. He must submit a general report upon matters touching his office to the house committee at the first meeting after January 1 and July 1 in each year (a).

(o) *R. v. Haslehurst* (1884), 13 Q. B. D. 253; 19 Digest 531, 3922.

(p) Public Assistance Order, 1930, Art. 143 (S.R. & O., 1930, No. 185); 12 Statutes 1075. For definitions of "council" and "institution," see Art. 6.

(q) Art. 144.

(r) Art. 163 (f). For a form of consent, see Report of Joint Committee of Convocation of Canterbury on Chaplains to Institutions, 1930, No. 573, p. 5.

(s) Art. 148.

(t) Ss. 72—74; 12 Statutes 1003, 1004. For special provisions relating to religious instruction of children, see also Public Assistance Order, 1930, Arts. 40, 90, 174 (S.R. & O., 1930, No. 185); 12 Statutes 1061, 1069, 1085.

(u) S. 72 (4); 12 Statutes 1004.

(a) Public Assistance Order, 1930, Art. 174 (S.R. & O., 1930, No. 185); 12 Statutes 1085.

(b) *Ibid.*, Art. 50.

(c) 12 Statutes 1003.

The chaplain is not under the authority of the incumbent of the parish in which the workhouse is situate, and does not trench upon the rights of the incumbent by reading divine service to the inmates in the workhouse chapel (*d*). A chaplain may be removed from office for incompetence or misconduct by the Minister of Health (*e*).

It is no part of the duty of the chaplain to supervise or report upon the work done by religious instructors or ministers of denominations other than the Church of England.

A public assistance authority should not permit the holding of services by religious instructors at the same time as the Church of England services if this would interfere with the ministrations of the chaplain.

A service should not be held in a ward if the medical officer considers that this would be detrimental to the health of any patient, nor should the management committee permit the holding of a religious service by a minister of any particular denomination in a ward in which members of any other denomination are present if objection is taken to such service. [213]

Mayor's and Sheriff's Chaplains.—In many counties and boroughs it is the custom for the sheriff or the mayor to appoint a personal chaplain during his year of office. The office is purely honorary and has no statutory recognition. In some counties and boroughs such appointments are made only occasionally, in others, not at all.

High sheriffs and city sheriffs should not fail to appoint a chaplain when a prisoner is to be arraigned at Assizes on a capital charge, as it is customary for the judge of assize to require the attendance of the chaplain on the bench when sentence of death is pronounced. The chaplain should, after the sentence, say "Amen."

In many boroughs it is usual for the mayor to invite the members of the council and other personages of the borough to attend divine service in state on the first Sunday after his election on November 9. The chaplain also has a prominent place assigned to him on the occasion of ceremonial processions and meetings. On one occasion a mayor's chaplain claimed precedence in a procession immediately after the mayor, a claim which is clearly not sustainable. No objection could, it is submitted, be raised if a position is assigned to the chaplain immediately in front of the mayor and the mace-bearer. [214]

London.—The general law as to chaplains of burial grounds and of cemeteries equally applies in the metropolis, though the power to appoint chaplains under sect. 27 of the Cemeteries Clauses Act, 1847, has recently been applied to the City of London Cemetery (*f*).

The L.C.C. appoint chaplains for their mental hospitals, some whole-time and some part-time. There are Free Church ministers, Roman Catholic priests and a Jewish minister. Part-time visiting ministers of religion may be required to be members of the established staff and when so required are subject to the provisions of the Asylums Officers' Superannuation Act, 1909 (*g*), or the Asylums and Certified Institutions (Officers' Pensions) Act, 1918 (*h*), as the case may be. One visiting chaplain and one Free Church minister are not members of the established staff.

(*d*) *Molyneux v. Bagshawe* (1863), 2 New Rep. 196; 19 Digest 548, 4064.

(*e*) Poor Law Act, 1930, s. 13; 12 Statutes 976; *Re Sudbury Union (Chaplain)* (1863), 1 New Rep. 235; 19 Digest 549, 4066; *sub nom. Ex parte Molyneux*, 27 J. P. 56; 16 Digest 431, 2918; *Re Teather and Poor Law Commissioners* (1850), 19 L. J. (M. C.) 70; 37 Digest 212, 87.

(*f*) 23 & 24 Geo. 5, c. xxiii, s. 11.

(*g*) 11 Statutes 152.

(*h*) *Ibid.*, 197.

Chaplains who on appointment in a whole-time capacity in the council's service are compulsory contributors under the Clergy Pensions Measures, 1926 to 1928 (i), and who do not desire as a condition of permanent appointment to contribute to the council's superannuation and provident fund are permitted to serve in a temporary capacity, subject to the condition that they shall have no claim to remain in the council's service after attaining the age of sixty-five years.

Certain of the metropolitan mayors appoint local clergy to the honorary office of mayor's chaplain. [215]

(i) 6 Statutes 261 *et seq.*

CHARGING ORDERS

See PRIVATE STREETS.

CHARGING ORDERS (HOUSING)

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See also title : HOUSING.

General.—An order charging on premises an annuity for work done under the Housing Acts may be made either by a county court judge or by a local authority under the Housing Acts. Where made by a county court judge under sect. 7 of the Housing Act, 1925 (a), it is a mode of recovering the cost of work done under bye-laws respecting houses divided into tenements, by some other person than the owner, and is made on the application of the local authority. Charges on premises may be imposed by local authorities, under sect. 16 of the Housing Act, 1925 (b), and sect. 18 of the Housing Act, 1930 (c), and deal with the payment for work done by the owner, or by the local authority on his behalf, on the repair, maintenance and sanitary condition of the premises. [216]

Charging Orders made by a County Court Judge.—Sect. 7 of the Housing Act, 1925 (a), deals with the execution of works to comply with bye-laws respecting houses divided into separate tenements. Where the person on whom the obligation is imposed satisfies the local authority that the expenses ought to be borne by his lessor or other superior landlord, the local authority may make an application to the county court judge, who, after giving the lessor or superior landlord an opportunity of being heard, may grant to the person who carried out the works a charging order (d), charging on the premises an annuity

(a) 13 Statutes 1007.

(b) *Ibid.*, 1012.

(c) 23 Statutes 410.

(d) See County Court Rules, Order L, Rule 59, and Form 457.

of such amount for such a number of years as the court may determine. Where a local authority have themselves acquired a leasehold interest, the Minister of Health may make a similar order (e) and his decision is final. Such charging orders must be registered in the Local Land Charges Register (f). [217]

Charging Orders made by Local Authorities.—Sect. 16 of the Housing Act, 1925, deals with an owner who has completed works on the repair, maintenance and sanitary condition of a dwelling-house under Part I. of the Act of 1925, with which is to be construed Part II. of the Act of 1930. He may apply to a local authority for a charging order, and must produce a certificate from their surveyor or engineer to say that the works have been executed to his satisfaction, and also the accounts and vouchers relating to the costs, charges and expenses of the works. The local authority must then make an order charging on the house an annuity of six pounds for every one hundred pounds of the amount. This begins at the date of the order and is payable for a term of thirty years to the owner named in the order, his executors, administrators or assigns. Copies of the order and the certificate of the surveyor or engineer and of the accounts certified by the clerk to be true accounts, must within six months be deposited with the clerk of the peace of the county and filed by him. A person aggrieved by the order under this section may appeal to quarter sessions. Under sect. 18 of the Act of 1930, on the failure of persons having control of a house to carry out work ordered by a local authority, they themselves may do the work and recover the expenses. They may declare the expenses to be payable by weekly or other instalments within a period not exceeding 30 years, with interest, at such rate as the Minister may by order declare (g), or make them a charge on the premises. For the purpose of enforcing the charge the local authority is to have all the same powers and remedies under the Law of Property Act, 1925, as if they were mortgagees (h). The charge must be registered under the Land Charges Act, 1925 (i). It has been decided that it is not a charge on the interests of the rack-rent owner only, but upon all the interests in the premises (k). It is sufficient to bring the rack-renter only before the court in the first instance, and there is no obligation upon the local authority to make inquiries to ensure that all the persons interested are before the court (l). The charge ranks in priority to a perpetual yearly rentcharge whether created by grant or reservation (m).

The making of a charging order by a local authority is provided for in sect. 32 of the Act of 1925. It must be in the form the Minister shall prescribe (n), and is to be a charge having priority over all existing and future estates, interests and encumbrances except (1) quit-rents and other charges incident to tenure, and tithe rentcharge; (2) any charge created under the P.H.A. or any local Act, and (3) any charge created under any Act authorising advances of public money. If more than one

(e) Housing Act, 1925, s. 7 (6); 13 Statutes 1008.

(f) Land Charges Act, 1925, s. 15 (4); 15 Statutes 539.

(g) Fixed at 4 per cent. by the Housing (Rate of Interest Amendment) Order, 1930 (S.R. & O., 1934, No. 558).

(h) Housing Act, 1930, s. 18 (6); 23 Statutes 411.

(i) S. 15 (4); 15 Statutes 539.

(k) *Paddington B.C. v. Finucane*, [1928] Ch. 567; Digest (Supp.).

(l) *Ibid.*, at p. 576.

(m) *Bristol Corpn. v. Virgin*, [1928] 2 K. B. 622; Digest (Supp.).

(n) No form has been prescribed by the Minister, and that contained in the Fifth Schedule to the Housing of the Working Classes Act, 1890, has been repealed.

charge is made under Part I. of the Act of 1925 on the same house, they take precedence according to date. A charging order is conclusive evidence that all proceedings under the Act have been in order. Every annuity charged may be recovered in the same way as if it were a rentcharge granted by deed, and may be transferred in the same manner as a mortgage or rentcharge (o), in such a form as the Minister may prescribe, and may be redeemed at any time by the owner. If the house is in Yorkshire, the charging order must be registered as if it were made by deed by the absolute owner of the premises (p). [218]

Appeals.—Nothing is said as to appeal from the county court under sect. 7, so the usual appeal would lie as in other cases (q). Apart from the appeal to quarter sessions under sect. 16 already mentioned, appeals against charging orders made by local authorities are dealt with in sect. 22 of the Housing Act, 1930 (r). Any person aggrieved may within twenty-one days of the service of the order appeal to the county court and no proceedings may be taken by the authority to enforce the order before the appeal has been finally determined (s). No question can be raised at the hearing which might have been raised on an appeal against the original notice requiring the execution of the works. The action must be tried without a jury, and the judge may make an order confirming or quashing the charging order, or he may accept from the appellant any undertaking that might have been accepted by the local authority, and any undertaking so accepted by the judge has the same effect as if it had been given to and accepted by the local authority. Appeal on a point of law from the decision of the county court judge in this case must be made direct to the Court of Appeal and there is no further appeal (t). If no appeal is made the charge becomes operative on the expiration of the twenty-one days, or if an appeal is carried to the Court of Appeal, as from the date of the final determination. The withdrawal of an appeal is to be deemed to be its final determination. [219]

London.—Under sect. 34 of the Housing Act, 1925 (u), the local authorities for the purposes of Part I. of that Act are, save as otherwise expressly provided in relation to the making and enforcement of bye-laws, as respects the City of London, the Common Council, and as respects any other part of the administrative county of London, the metropolitan borough councils. Part I. includes sects. 7, 16 and 32 of the Act mentioned above, which therefore apply to the administrative county of London. Under sect. 6, bye-laws relating to houses intended or used for occupation by the working classes, and divided into separate tenements, are enforceable by the Common Council or the metropolitan borough councils, as the case may be, except in the case of bye-laws for securing stability and the prevention of and safety from fire, in which case they are enforceable by the L.C.C. [220]

(o) Law of Property Act, 1925, ss. 114, 118; 15 Statutes 295, 299.

(p) See Yorkshire Registries Act, 1884; and Amendments; 15 Statutes 142 *et seq.*

(q) By the Administration of Justice (Appeals) Act, 1934 (24 & 25 Geo. 5, c. 40), s. 2, and S.R. & O., 1934, No. 839, all appeals from a judgment, direction, decision, decree or order of a county court made after January 1, 1934, lie to the Court of Appeal instead of the High Court. As to procedure, see S.R. & O., 1934, No. 840.

(r) 23 Statutes 413.

(s) County Court Rules, Order L, Rule 60, and Form 457A.

(t) Housing Act, 1930, s. 22 (4); 23 Statutes 414.

(u) 13 Statutes 1022.

CHARITIES

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See also titles :

ALLOTMENTS ;
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FOR THE GENERAL LAW RELATING TO CHARITIES, *See* HALSBURY'S LAWS OF ENGLAND, 2ND ED., VOL. 4, TITLE "CHARITIES."

GENERAL OBSERVATIONS

Meaning of the Term "Charity."—There is no definition for all legal purposes of the word "charity," and it would seem to be hardly susceptible of definition. In the sense in which it is popularly used it implies the relief of poverty, but a wider interpretation has been given to it by decisions of courts of law based, as is the definition for the purposes of the Charitable Trusts Acts in sect. 66 of the Charitable Trusts Act, 1853 (*a*), on the preamble to the Statute of 43 Eliz. c. 4 (*b*). The preamble enumerated certain objects as falling within the description "charitable" for the purpose for which the Statute was passed,

(*a*) 2 Statutes 345.

(*b*) Repealed by the Mortmain and Charitable Uses Act, 1888 ; 2 Statutes 385. In s. 13 (2) of this Act the repealed preamble is set out and it is recited that reference is made in divers enactments and documents to "charities within the meaning, purview and interpretation" of the preamble, and the sub-section then enacts that references to such charities shall be construed as references to charities within the preamble.

which was to remove abuses in the administration of the more limited range of charitable purposes then existing.

The objects named in the Statute of Elizabeth were the relief of aged, impotent and poor people, the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities, the repair of bridges, ports, havens, causeways, churches, sea banks and highways, the education and preferment of orphans, the relief, stock or maintenance for houses of correction, marriages of poor maids, supportation, aid and help of young tradesmen, handicraftsmen and persons decayed, the relief or redemption of prisoners or captives, and the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.

Other purposes of a wider range which have come into view in the course of time have been held to fall within the spirit if not the actual words then used, and the term "charity" has been held in recent times to cover four classes of objects, viz.: (1) the relief of poverty; (2) the advancement of education; (3) the advancement of religion; and (4) other purposes beneficial to the community not falling under any of the preceding heads (c). The last-mentioned class is generally considered to be covered by the description "general public purposes." [221]

Essential Elements of a Legal Charitable Trust.—In order that a gift may be valid for the creation of a charitable trust the intention must be directed to the benefit of the community or of particular classes of it (d), but not specific individuals. The distinction for this purpose between a class of the community and a body of individuals is sometimes a fine one, but for the former at least a substantial body of the community is necessary (e). The fact that the trust will benefit rich as well as poor does not prevent it from being legally charitable (f), but it is doubtful whether it is charitable if the poor are excluded altogether (g).

The intention must also be certain in regard both to the objects and the amount given. Thus the fact that the gift is to a municipal corporation (h) or a registered trade union (i) is not sufficient alone to show a charitable intention. The objects must be so stated as to leave no alternative but to apply the gift to purposes which the law recognises as charitable (k). Gifts have accordingly been held to be void for uncertainty on this ground which have been expressed to be "for charitable or philanthropic purposes" (l), or for "such charitable or

(c) *Income Tax Special Purposes Commissioners v. Pemsel*, [1891] A. C. 531, at p. 583, per Lord MACNAGHTEN; 8 Digest 241, 1.

(d) *Goodman v. Saltash Corpn.* (1882), 7 App. Cas. 633, at p. 650; 11 Digest 19, 224; *Re Christchurch Inclosure Act* (1888), 38 Ch. D. 520; 8 Digest 289, 658; *Re Foveaux, Cross v. London Anti-Vivisection Society*, [1895] 2 Ch. 501, 504; 8 Digest 259, 206; *Re Hummeltenberg, Beatty v. London Spiritualistic Alliance*, [1923] 1 Ch. 237; Digest (Supp.).

(e) *Shaw v. Halifax Corpn.*, [1915] 2 K. B. 170, C. A.; 8 Digest 243, 21; 38 Digest 460, 241; *Verge v. Somerville*, [1924] A. C. 496, 499; Digest (Supp.); *Hall v. Derby Sanitary Authority* (1885), 16 Q. B. D. 163; 8 Digest 243, 26; 38 Digest 459, 239.

(f) *Jones v. Williams* (1767), Amb. 651; 8 Digest 244, 36; *Verge v. Somerville*, *supra*; *Keren Kayemeth Le Jisroel, Ltd. v. Inland Revenue Commissioners*, [1931] 2 K. B. 465, 492, C. A.; Digest (Supp.).

(g) *Re Macduff, Macduff v. Macduff*, [1896] 2 Ch. 451, 464, C. A., per LINDLEY, L.J.; 8 Digest 296, 731; and see *A.-G. v. Northumbreland (Duke)* (1877), 7 Ch. D. 745, 752; 8 Digest 306, 356.

(h) *Gloucester Corpn. v. Osborn* (1847), 1 H. L. C. 272; 43 Digest 579, 280.

(i) *Re Amos, Carrier v. Price*, [1891] 3 Ch. 159; 8 Digest 325, 1083.

(k) *Morice v. Durham (Bishop)* (1804), 9 Ves. 399; (1805), 10 Ves. 522; 43 Digest 582, 305.

(l) *Re Macduff, Macduff v. Macduff*, *supra*.

public purposes" as the donor's trustees think proper (*m*), or for "patriotic purposes or objects" (*n*), or for "charitable or public purposes in Wales" (*o*), or for charitable purposes "or for such objects as" the executor in his discretion may select (*p*). On the other hand a trust for purposes "charitable and benevolent" is good (*q*), and the principle is that, although all purposes generally regarded as beneficial to the community or sections of it are not legally "charitable," if the word "charitable" is used, or some legally charitable purpose is prescribed as an object, the addition in a form which is not alternative of other objects does not create such uncertainty as to make the whole gift fail.

It is also necessary that the purpose indicated should be practicable (*r*) and not contrary to public policy (*s*), and not subject to a condition precedent expressed or reasonably inferred which is not in fact fulfilled (*t*) or may not be fulfilled within the limits of perpetuity (*u*), though in some cases a condition may be ignored (*a*) and a gift to charitable purposes of the residue of a fund or its income expressed to take effect subject to a preceding gift which fails may be good (*b*).

It has been said in some of the cases that if a trust is in the legal sense charitable the fact that it is of doubtful benefit to the community does not affect its validity (*c*). The more recent decisions, however, appear to indicate that the court will lean against gifts which are not in fact for the public benefit and are not capable of being controlled by the court (*d*). [222]

The Four Classes. Religion.—In considering the four main heads under which charitable trusts were classified in *Pemsel's Case* (*e*), it is unnecessary for the present purpose to deal with charities for the advancement of religion, with which local government authorities have little direct concern.

Local government authorities may be concerned to the extent of appointing representatives to act on bodies of trustees administering charities which have some connection with religion, viz. charities the trusts of which provide for purposes in part religious and in part not,

(*m*) *Blair v. Duncan*, [1902] A. C. 37; 8 Digest 295, 721.

(*n*) *Re Tetley*, [1923] 1 Ch. 258, affirmed in the House of Lords, *sub nom. A.-G. v. National Provincial and Union Bank of England*, [1924] A. C. 262; Digest (Supp.).

(*o*) *Re Davis, Thomas v. Davis*, [1923] 1 Ch. 225; Digest (Supp.).

(*p*) *Re Chapman, Hales v. A.-G.*, [1922] 2 Ch. 479, C. A.; Digest (Supp.).

(*q*) *Re Best, Jarvis v. Birmingham Corpn.*, [1904] 2 Ch. 354; 8 Digest 297, 744.

(*r*) *Re Packe, Sanders v. A.-G.*, [1918] 1 Ch. 437; on appeal *sub nom. Re Packe, Campion v. A.-G.*, 145 L. T. Jo. 111, C. A.; 8 Digest 333, 1189.

(*s*) *Re Robinson, Besant v. German Reich*, [1931] 2 Ch. 122; Digest (Supp.).

(*t*) *Re University of London Medical Sciences Institute Fund, Fowler v. A.-G.*, [1909] 2 Ch. 1, C. A.; 8 Digest 291, 690.

(*u*) *Chamberlayne v. Brockett* (1872), 8 Ch. App. 206; 8 Digest 326, 1095; *Re Swain, Monckton v. Hands*, [1905] 1 Ch. 669, C. A.; 8 Digest 327, 1097; *Worthing Corpn. v. Heather*, [1906] 2 Ch. 532; 8 Digest 328, 1105.

(*a*) *Re Robinson, Wright v. Tugwell*, [1923] 2 Ch. 332; Digest (Supp.).

(*b*) *Re Rogerson, Bird v. Lee*, [1901] 1 Ch. 715; 8 Digest 300, 777, and other cases there referred to relating to void trusts for the repair of tombs; and see *Re Hooper, Parker v. Ward*, [1932] 1 Ch. 38; Digest (Supp.).

(*c*) See e.g. *Re Foveaux*, [1895] 2 Ch. 501, per CHITTY, J., at pp. 503, 507; 8 Digest 259, 206; *Philpott v. St. George's Hospital* (1859), 27 Beav. 107, 112; 8 Digest 336, 1245.

(*d*) *Re Hummeltenberg*, [1923] 1 Ch. 237; Digest (Supp.); and see *Re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557, C. A. (compromised on appeal to House of Lords, *sub nom. A.-G. v. Plowden*, [1931] W. N. 89; Digest (Supp.)).

(*e*) [1891] A. C. at p. 583; 8 Digest 241, 1.

and eleemosynary charities governed by trusts which though prescribing conditions of a religious nature, *e.g.* a requirement that recipients of benefits shall attend service at places of worship or that a preference shall be given to persons of particular religious denominations, are not "ecclesiastical" charities within the L.G.A., 1894 (*f*). The material provisions in this respect of the L.G.A., 1894, including the means provided by it for effecting an apportionment of the endowments of charities which are for purposes in part only ecclesiastical, are dealt with below (*g*). [223]

Education.—Reference may be made to the titles mentioned at the head of this title.

The main principles governing the creation and performance of trusts for the advancement of education are the same as those applicable to other charities. Educational trusts were formerly under the jurisdiction of the Charity Commissioners. Under the Board of Education Act, 1899 (*h*), and three Orders in Council made under it this jurisdiction under the Charitable Trusts Acts, the Endowed Schools Acts, 1869 to 1889 (*i*), and other Acts (as enumerated in the third of the Orders in Council which came into operation on October 1, 1902) was transferred to the Board of Education. Sect. 2 (2) of the Board of Education Act, 1899, provided that any question whether an endowment or any part of an endowment is held for or ought to be applied to educational purposes shall be determined by the Charity Commissioners. [224]

Relief of Poverty.—Poverty would seem to be an essential element which is inferred if not expressed in the case of the three forms of disability which are classed together under this head in the preamble to the Statute of Elizabeth (*k*). A gift which contemplates the relief of aged or impotent or poor persons is charitable if it is expressed to be for such persons generally or for those living in particular places or even on a specified estate or in a specified place of employment (*l*). It is also charitable if it is for particular classes or sections of poor, such as servants (*m*) or poor members of a particular trade (*n*). The element of poverty may be implied, *e.g.* a gift for "respectable single women of good character above the age of sixty" (*o*), for the widows and orphans of a parish (*p*) or "the widows and children of seamen belonging to" a town (*q*), for "aged widows and spinsters of a parish" (*r*), for support of a home of rest for lady teachers who also contribute to it (*s*), for the "oldest respectable inhabitants" (*t*), for widows and spinsters with

(*f*) 10 Statutes 773.

(*g*) See *post*, p. 98.

(*h*) 7 Statutes 124. See *Re Betton's Charity*, [1908] 1 Ch. 205; 8 Digest 343, 1361.

(*i*) 7 Statutes 241 *et seq.*

(*k*) *A.-G. v. Northumberland (Duke)* (1877), 7 Ch. D. 745, 749; 8 Digest 306, 856.

(*l*) For decisions in cases under this head, see 4 Halsbury (Hailsham ed.), title "Charities," pp. 111 *et seq.*

(*m*) *Reeve v. A.-G.* (1848), 3 Hare, 191; *Loscombe v. Wintringham* (1850), 13 Beav. 87; 8 Digest 309, 906.

(*n*) *Re White's Trusts* (1886), 33 Ch. D. 449; 8 Digest 333, 1188.

(*o*) *Re Dudgeon, Truman v. Pope* (1896), 74 L. T. 613; 8 Digest 243, 22.

(*p*) *A.-G. v. Comber* (1824), 2 Sim. & St. 93; 8 Digest 244, 33.

(*q*) *Powell v. A.-G.* (1817), 3 Mer. 48; 8 Digest 244, 37.

(*r*) *Thompson v. Corby* (1860), 27 Beav. 649; 8 Digest 244, 34.

(*s*) *Re Estlin, Prichard v. Thomas* (1903), 72 L. J. (Ch.) 687; 8 Digest 245, 45; and see *Re James, Grenfell v. Hamilton*, [1982] 2 Ch. 25; Digest (Supp.).

(*t*) *Re Lucas, Rhys v. A.-G.*, [1922] 2 Ch. 52; Digest (Supp.).

incomes limited to £120 per annum (*u*), or "for the benefit of blind persons resident" in a specified city or borough (*a*). But it will not be inferred unless the intention is reasonably clear (*b*).

It is a well-settled rule that the benefit of charities for the poor should be confined to poor who do not receive poor law relief, since an appropriation in aid of rates relieves those who pay the rates rather than the poor (*c*). But if the terms of the trust require or permit an appropriation in aid of rates it is none the less valid as a charitable trust, *e.g.* a gift to a local authority towards the cost of poor law services (*d*), and a gift for the benefit of poor whether in receipt of poor law relief or not (*e*). [225]

The tendency in modern times has been for the State to encroach on the field of charity and for the forms of charitable benefits to be widened, and it is the practice of the Charity Commissioners when making schemes for charities which give benefits to poor persons in the form of almshouse stipends or out-pensions, to follow the general rule that the income of a charity ought not to be applied so as to reduce the State benefits. Such schemes therefore generally impose on trustees the duty of fixing the amount of the charity benefits on a sliding scale and of taking into account the income of recipients from other sources including old age pensions.

Gifts are also good under this head which are designed to benefit poor persons indirectly, *e.g.* gifts for the apprenticing of or provision of outfits for poor children (*f*) or assisting them in other ways to earn their living, the assistance of poor persons to find employment, the provision of land for letting to poor persons at low rents (*g*), the provision of "open air recreation for working people" (*h*), the support of orphanages and other institutions for disabled persons such as medical hospitals, dispensaries and almshouses (*i*), and gifts to friendly and other mutual benefit societies under the rules of which poverty is a condition of obtaining benefits (*k*). [226]

Clauses for the regulation of "employment agencies" are sometimes included in Bills promoted by local authorities, and questions have arisen in regard to the application of the term to certain charities having or including somewhat similar objects. Under the present practice a clause is approved which excludes from the category of employment agency "any duly constituted religious or charitable society or body operating throughout Great Britain to the main objects of which the provision of situations or employment is merely subsidiary," and

(*u*) *Re De Carteret*, [1933] Ch. 103, and cases there referred to; Digest (Supp.).

(*a*) *Re Elliott, Raven v. Nicholson*, [1910] W. N. 106; 8 Digest 243, 23.

(*b*) *Inland Revenue Commissioners v. Roberts Marine Mansions Trustees* (1926), 43 T. L. R. 52; (1927), *ibid.*, 270, C. A.; Digest (Supp.); *Re Gwyon, Public Trustee v. A.-G.*, [1930] 1 Ch. 255; Digest (Supp.).

(*c*) *A.-G. v. Exeter Corpn.* (1827), 3 Russ. 395; 8 Digest 318, 997; *A.-G. v. Wilkinson* (1839), 1 Beav. 370, at p. 373; 8 Digest 319, 999.

(*d*) *Luckraft v. Pridham* (1877), 6 Ch. D. 205; 8 Digest 284, 600; 42 Digest 768, 1945; *Re St. Alphage, London Wall* (1888), 59 L. T. 614; 8 Digest 255, 169.

(*e*) *A.-G. v. Wilkinson*, *supra*, at p. 373.

(*f*) *A.-G. v. Minshull* (1798), 4 Ves. 11; 8 Digest 331, 1151; *A.-G. v. Winchelsea (Earl)* (1791), 3 Bro. C. C. 374; 8 Digest 267, 295; *A.-G. v. Wansay* (1808), 15 Ves. 231; 8 Digest 349, 1436.

(*g*) *Crafton v. Frith* (1851), 4 De G. & Sm. 237; 8 Digest 274, 403.

(*h*) *Re Hadden, Public Trustee v. More*, [1932] 1 Ch. 133; Digest (Supp.).

(*i*) See cases cited in 4 Halsbury (Hailsham ed.), title "Charities," p. 114.

(*k*) *Re Clark's Trust* (1875), 1 Ch. D. 497; 8 Digest 262, 241; *Cunnack v. Edwards*, [1896] 2 Ch. 679, C. A.; 8 Digest 262, 242.

provides that any question whether such a society or body is within the clause shall be determined by the Charity Commissioners. [227]

General Public Purposes.—Gifts for public purposes may benefit all classes of the community, including the rich as well as the poor. Besides those expressly mentioned in the Statute of Elizabeth others of a similar kind are held to be charitable by analogy. When the term "charity" is used in its widest sense, modern municipal corporations and other local authorities in respect of all funds and property held for public purposes are trustees holding on charitable trusts (*l*). It has, however, been held that land purchased by a ward of the City of London out of its common fund for the business purposes of the ward and conveyed to trustees for those purposes is not subject to an implied charitable trust (*m*), and the tendency now is to place property which is held by local authorities for purposes closely connected with their ordinary functions of local government in the separate province of local government law and under the jurisdiction of the M. of H. rather than in that of the law of charities and under the jurisdiction of the Charity Commissioners.

On this principle, recreation grounds which have been originally conveyed to individual trustees have been transferred under schemes made by the Charity Commissioners to a local authority upon trust to be held and managed in accordance with the P.H.A. (*n*). For this purpose parish councils have under sect. 8 (1) of the L.G.A., 1894 (*o*), the powers of an urban authority under sects. 164 and 184 of the P.H.A., 1875, sects. 250 to 252 of the L.G.A., 1933 (*p*), and sect. 44 of the P.H.A. Amendment Act, 1890 (*pp*), and can provide public walks and pleasure grounds under s. 164 of the 1875 Act. They can also acquire and maintain land for playing fields under s. 69 of the P.H.A., 1925 (*q*). Wider powers in this respect can be exercised by urban and rural district councils under Part VI. of the P.H.A. Amendment Act, 1907 (*r*), and Part VI. of the P.H.A., 1925 (*s*), and unless the recreation ground is small and the benefit confined to a rural civil parish it would seem that a transfer of the legal interest and management to an urban or rural district council rather than to a parish council is generally expedient. One of the advantages derived from a transfer of the administration and management to a local authority is that proper bye-laws can be made and enforced by summary proceedings.

Examples of gifts which are charitable, as being for public purposes and with which local authorities are more especially concerned, are gifts for repairing highways (*t*) and walls and bridges (*u*), providing work-houses (*a*), cemeteries (*b*), and the supply of water (*c*), paving, lighting,

(*l*) *A.-G. v. Liverpool Corpn.* (1835), 1 My. & C. 171, 201; 33 Digest 98, 666; *A.-G. v. Heelis* (1824), 2 Sim. & St. 67; 8 Digest 256, 175.

(*m*) *Finnis and Young to Forbes and Pockin* (No. 1) (1883), 24 Ch. D. 587; 11 Digest 164, 419.

(*n*) 13 Statutes 463 *et seq.*

(*o*) 10 Statutes 780.

(*p*) 13 Statutes 705; 26 Statutes 440. Ss. 183, 184 of the 1875 Act have been partly repealed by the Act of 1933.

(*pp*) 13 Statutes 841.

(*q*) *Ibid.*, 1146.

(*r*) *Ibid.*, 938.

(*s*) *Ibid.*, 1139.

(*t*) *A.-G. v. Harrow School (Governors)* (1754), 2 Ves. Sen. 551; 8 Digest 376, 1877; *A.-G. v. Day*, [1900] 1 Ch. 31; 8 Digest 351, 1459.

(*u*) *A.-G. v. Shrewsbury Corpn.* (1843), 6 Beav. 220; 8 Digest 256, 177; *Forbes v. Forbes* (1854), 18 Beav. 552; 8 Digest 338, 1274.

(*a*) *Re St. Botolph Without Bishopsgate Parish Estates* (1887), 35 Ch. D. 142; 8 Digest 255, 167; *Webster v. Southey* (1887), 36 Ch. D. 9; 32 Digest 440, 1107.

(*b*) *A.-G. v. Blizard* (1855), 21 Beav. 233; 7 Digest 548, 270.

(*c*) *Jones v. Williams* (1767), Amb. 651; 8 Digest 244, 36.

widening and otherwise improving streets (*d*), and other public works (*e*). Similarly gifts to the National Trust Society for the preservation of places of public interest (*f*), and for the provision and maintenance of other kinds of institutions conducing to the physical and mental betterment of the community generally, are good charitable purposes (*g*).

The recipients of benefits of this kind may be the inhabitants without distinction of a particular locality, such as a county, borough, town, ward or parish or other place (*h*), or a section only of such inhabitants, such as the freemen of a borough (*i*), the free inhabitants of ancient tenements in a borough (*k*) or the occupiers for the time being of certain cottages (*l*). [228]

MODE OF CREATION OF CHARITABLE TRUSTS

General Observations.—The more ancient trusts were frequently created by royal charter or letters patent, but charitable trusts more often originate under Acts of Parliament, such as Inclosure Acts and awards made under them, wills, deeds, and declarations of trust made under hand only. No special form of words is required, and it is sufficient that the intention should be clear (*m*). The existence of a charitable trust may even be inferred from the surrounding facts (*n*).

In some cases of ancient charities, where the original instrument of foundation is lost or ambiguous, the court has held a charitable trust to be proved on evidence of long usage, *e.g.* a trust for free inhabitants of a borough to dredge for oysters (*o*), a trust giving grazing rights to inhabitants over lands of a borough (*p*) or a trust for freemen (*q*). [229]

Inclosure Acts and Awards.—In rural parishes many trusts designed to benefit the labouring class have arisen under Inclosure Acts and

(*d*) *A.-G. v. Heelis* (1824), 2 Sim. & St. 67, at pp. 76, 77; 8 Digest 256, 175; *A.-G. v. Eastlake* (1853), 11 Hare, 205; 8 Digest 242, 3.

(*e*) *Howse v. Chapman* (1799), 4 Ves. 542; 8 Digest 256, 173; *A.-G. v. Heelis, supra*; *Faversham Corpn. v. Ryder* (1854), 5 De G. M. & G. 350; 8 Digest 256, 180; *A.-G. v. Brown* (1818), 1 Swan, 265; 8 Digest 257, 184.

(*f*) *Re Verrall, National Trust, etc. v. A.-G.*, [1916] 1 Ch. 100; 8 Digest 260, 217; *Re Cranstoun, National Provincial Bank v. Royal Society for the Encouragement of Arts, etc.*, [1932] 1 Ch. 537; Digest (Supp.).

(*g*) *Re Scowcroft, Ormrod v. Wilkinson*, [1898] 2 Ch. 638, at p. 642; 8 Digest 247, 68 (club and reading room); *British Museum v. White* (1826), 2 Sim. & St. 594; 8 Digest 257, 187 (museum); *Re Mann, Hardy v. A.-G.*, [1903] 1 Ch. 232; 8 Digest 257, 182 (reading room); *Re Hadden, Public Trustee v. More*, [1932] 1 Ch. 133; Digest (Supp.) (recreation).

(*h*) *A.-G. v. Lonsdale (Earl)* (1827), 1 Sim. 105; 8 Digest 312, 932; *A.-G. v. Dartmouth Corpn.* (1883), 48 L. T. 933; 8 Digest 244, 39; *Baylis v. A.-G.* (1741), 2 Atk. 239; 8 Digest 303, 821; *Re Mann, Hardy v. A.-G.*, *supra*; *Re Allen, Hargreaves v. Taylor*, [1905] 2 Ch. 400; 8 Digest 257, 183.

(*i*) *Re Norwich Town Close Estate Charity* (1888), 40 Ch. D. 298, C. A.; 8 Digest 406, 2414. Part XIV. of the L.G.A., 1933 (26 Statutes 445), which substantially re-enacts Part. X. of the Municipal Corpns. Act, 1882; 10 Statutes 641, contains the existing law in regard to freemen of municipal boroughs and preserves many rights of freemen existing prior to the Municipal Corpns. Act, 1835 (5 & 6 Wm. 4, c. 76), and the Honorary Freedom of Boroughs Act, 1885; 10 Statutes 685.

(*k*) *Goodman v. Saltash Corpn.* (1882), 7 App. Cas. 633; 8 Digest 327, 1099; 11 Digest 19, 224; 19 Digest 56, 322.

(*l*) *Re Christchurch Inclosure Act* (1888), 38 Ch. D. 520, C. A.; on appeal *sub nom. A.-G. v. Meyrick*, [1893] A. C. 1; 8 Digest 289, 653; 11 Digest 29, 366; 37 Digest 91, 277.

(*m*) *Salisbury v. Denton* (1857), 3 K. & J. 529; 44 Digest 892, 7503.

(*n*) *Pease v. How* (1922), 91 L. J. (Ch.) 334; Digest (Supp.).

(*o*) *Goodman v. Saltash Corpn.*, *supra*.

(*p*) *Haigh v. West*, [1893] 2 Q. B. 1926, C. A.; 8 Digest 281, 545; *A.-G. v. Cashel Corpn.* (1843), 3 Dr. & W. 294; 28 Digest 467, c.

(*q*) *Stanley v. Norwich Corpn.* (1887), 3 T. L. R. 506; 8 Digest 335, 1223.

awards allotting lands for fuel, field gardens and recreation, and the general policy of the legislature has been to direct or enable the transfer of the legal interest in and the management of such lands to local authorities as being held for the benefit of the inhabitants generally of their areas.

The term "allotments" is generally in ordinary use confined to "field gardens," and as so used it is applied both to land allotted for cultivation by labouring poor under Inclosure Acts and awards and to land provided for similar purposes by local authorities under a succession of Acts of Parliament dealing with allotments and small holdings (*r*).

The provisions of the L.G.A., 1894 (*s*), in regard to the vesting of the property and management of allotments in parish councils are dealt with below (*t*).

Under sect. 7 of the Commons Act, 1899 (*u*), the councils of boroughs and districts were enabled to acquire the fee simple or any estate in or any rights in or over any common regulated by scheme under that Act by gift or purchase. It would appear that in rural parishes lands allotted under inclosure awards for field gardens for labouring poor ought to be administered by the parish council or by persons appointed by the parish meeting in view of sect. 33 (3) of the Small Holdings and Allotments Act, 1908 (*a*), and that any rents and accumulations should be applied under sect. 54 (1) of that Act to similar purposes unless the M. of H. consents to some other appropriation.

The same Act (*b*) also empowered wardens having the management of any land appropriated under the Inclosure Acts, 1845 to 1882, for allotments or field gardens for the labouring poor of any place by agreement to transfer the management to the council of the borough, urban district or parish (*c*) in which the land is wholly or partly situate. These powers of a borough council were extended to councils of metropolitan boroughs by the Land Settlement (Facilities) Act, 1919 (*d*).

Further provisions in regard to the vesting of allotments in and the transfer of the management to local authorities in rural and urban areas are contained in the Overseers Order, 1927, made under the R. & V.A., 1925 (*e*), and are referred to below (*f*). [230]

Assurances by Deeds and Wills—Mortmain and Charitable Uses Acts.

—All assurances of land to corporations by deed or will are ordinarily subject to the law of mortmain, which is now contained in Part I. of the Mortmain and Charitable Uses Act, 1888 (*g*), and, subject to exemptions contained in sects. 6, 8 and 12, which forbids the acquisition of lands by any corporation except under the authority of a licence in mortmain or of a statute. The restriction, accordingly, does not apply where land is bought under the authority of the Charity Commissioners with money arising from a previous sale of land belonging to the charity or received by way of equality of exchange or partition (*h*). The term "land" is defined in the Mortmain and Charitable Uses Act, 1891 (*i*), as including for both Acts tenements and hereditaments corporeal and

(*r*) See titles ALLOTMENTS and SMALL HOLDINGS.

(*s*) 10 Statutes 773.

(*t*) See pp. 99 *et seq.*

(*u*) 2 Statutes 609.

(*a*) 1 Statutes 263; see also Article 4 of the Overseers Order, 1927, at p. 110.

(*b*) S. 33 (1).

(*c*) "Parish council" includes "parish meeting" in rural parishes which have no parish council (*ibid.*, s. 61).

(*d*) 1 Statutes 288.

(*e*) 14 Statutes 617.

(*f*) See p. 110.

(*g*) 2 Statutes 385 *et seq.*

(*h*) Charitable Trusts Amendment Act, 1855, s. 35; 2 Statutes 354.

(*i*) *Ibid.*, 396.

incorporeal of any tenure but not money secured on land or other personal estate arising from or connected with land.

Assurances to charitable uses of land and of personal estate to be laid out in the purchase of land are also subject to the provisions contained in Part II. of the Mortmain and Charitable Uses Act, 1888 (*k*), which, subject to exemptions contained in ss. 6, 7 and 8, impose certain conditions and formalities. The term "assurance" is defined in sect. 10 as including a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest and every other assurance by deed, will or other instrument. Sect. 6 exempted from compliance with the prescribed conditions assurances by deed of any quantity of land, or by will of a specified quantity of land or of personal estate to be applied to a purchase of land, in both cases for the purpose only of a public park, a schoolhouse for an elementary school or a public museum, but required that such a will, or, in the case of the consideration being voluntary, such a deed, should be executed not less than twelve months before the death of the assesor and be enrolled in the books of the Charity Commissioners. The section says "for the purpose *only* of," etc. An assurance which provides for the land being held for one or more of the purposes specified in the section in combination with other purposes does not appear to be within the exemption provided for in the section.

Under sect. 4 (1), (3) of the Mortmain and Charitable Uses Act, 1888 (*l*), assurances of land for charitable uses must, subject to certain exceptions provided for in the section, be without any power of revocation, reservation, condition or provision for the benefit of the assesor or of any person claiming under him. This provision cannot be evaded by a colourable resort to the exceptions (*m*). A condition for reverter to the assesor is, however, expressly admitted in the case of conveyances under the School Sites Act, 1841 (*n*), and was held to operate when land had been conveyed under the Act for carrying on a school on six days of the week and the school had ceased to be used except on Sundays (*o*).

[231]

Among the existing statutory exemptions preserved by sect. 8 of the Act were those under the Recreation Grounds Act, 1859 (*p*), which enables a conveyance of any lands to be made for the purposes of the Act subject to any reservation, restrictions and conditions which the donor or grantor may think fit and without the restrictions in regard to the deed being enrolled or becoming void by the death of the grantor within twelve months. Sect. 3 of the Act authorised municipal corporations to make such grants with the consent of the Treasury, and under sect. 5 lords of manors, churchwardens or overseers to whom such lands should have been conveyed were constituted a body corporate for taking, holding and disposing of such grounds, and the Charity Commissioners were empowered to make schemes for the appointment of "managers and directors" in necessary cases.

The Open Spaces Act, 1906, sects. 2 and 3 (*q*), authorises trustees holding open spaces under a local or private Act to transfer them or

(*k*) 2 Statutes 387 *et seq.*

(*l*) *Ibid.*

(*m*) *Wickham v. Bath (Marquis)* (1865), L. R. 1 Eq. 17; 8 Digest 279, 520.

(*n*) Under ss. 2 and 3, but not under s. 6. See 7 Statutes 274 *et seq.*

(*o*) *A.-G. v. Shadwell*, [1910] 1 Ch. 92; 8 Digest 334, 1204.

(*p*) 12 Statutes 369.

(*q*) *Ibid.*, 382 (which repealed the Open Spaces Act, 1890, and the material parts of the Open Spaces Act, 1887).

grant facilities in respect of them to any local authority, and authorises other trustees holding land upon trust for the purposes of public recreation to transfer it to any local authority by free gift absolutely or for a limited term to be held upon the subsisting trusts or such other trusts being for public recreation as may be agreed upon with the approval of the Charity Commissioners.

The same Act by sect. 4 conferred similar powers on other trustees holding land for any charitable purpose subject, if the land is subject to the Charitable Trusts Acts, to their obtaining such authority or approval as is required under those Acts for a sale^(r) or otherwise subject to an order of the court. [232]

The local authorities for the purposes of the Act of 1906 are the council of any county, municipal or metropolitan borough, or district, the common council of the City of London and any parish council invested with the powers of the Act by an order of the county council. [233]

An exemption from Part I. of the Mortmain and Charitable Uses Act, 1888, does not impliedly involve an exemption from Part II. (s). The Working Classes Dwellings Act, 1890, sect. 1 (t), exempted assurances of land or personal estate for the purpose of the Act from Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, provided that the deed or will is enrolled in the books of the Charity Commissioners within six months and that land given by will does not exceed five acres. [234]

Under the Mortmain and Charitable Uses Act Amendment Act, 1892 (u), assurances of land by deed to any local authority for any purpose for which it is empowered by an Act to acquire land have the benefit of the exemptions in sect. 6 of the Mortmain and Charitable Uses Act, 1888 (a), subject to the conditions prescribed in that section, except that voluntary assurances by deed need not be executed at least twelve months before the death of the assurator. "Local authority" is defined in sect. 2 of the 1892 Act in such terms as to include any county or borough council, district council or parish council, or any body having power to make a local rate or issue a precept or other document for the proceeds of any such rate, and "assurance" has the same meaning as in the Act of 1888. [235]

The L.G.A., 1933 (b), enables all local authorities as corpsns. to hold land without licence in mortmain, and by sect. 268 empowers them to accept and hold gifts of real or personal property for any local public purpose, or for the benefit of the inhabitants of the area or some part thereof, but does not apparently extend the exemption allowed by the Mortmain and Charitable Uses Act Amendment Act, 1892 (c).

The requirements in regard to attestation and enrolment prescribed in sub-sects. (6) and (9) of sect. 4 of the Mortmain and Charitable Uses Act, 1888 (d), were altered in respect of assurances or separate instruments declaring charitable uses executed after January 1, 1926, by sect. 29 (4) of the Settled Land Act, 1925 (e), which requires that such assurances or separate instruments shall be sent to the offices of the

(r) See s. 29 of the Charitable Trusts Amendment Act, 1855; 2 Statutes 353.

(s) *Re Verrall, National Trust, etc. v. A.-G.*, [1916] 1 Ch. 100; 8 Digest 260, 217.

(t) 2 Statutes 398.

(u) *Ibid.*, 398.

(b) Ss. 2 (2), 17 (3), 31 (2), 47 (3) and 48 (2).

(c) 2 Statutes 398.

(e) 17 Statutes 869.

(a) *Ibid.*, 389.

(d) *Ibid.*, 388.

Charity Commissioners within six months after the execution thereof or such extended period as they may allow for the purpose of being recorded in the Commissioners' books. Registered dispositions of registered land and assurances or instruments within sect. 117 of the Education Act, 1921 (f), are excepted from this enactment.

The above-mentioned provisions of the Settled Land Act, 1925 (g), are expressed to be enacted "in place of the requirements respecting attestation and enrolment" in sect. 4 (6) and (9) of the Mortmain and Charitable Uses Act, 1888 (h), and it would seem, therefore, that all the remaining provisions of sect. 4 of the Act of 1888, including the consequences of non-observance of the conditions and formalities there prescribed, remain in operation. [236]

The provisions of sect. 4 of the Mortmain and Charitable Uses Act, 1888 (h), and, it would seem, those of sect. 29 of the Settled Land Act, 1925 (g), do not apply to assurances of land which is already in mortmain or held upon charitable uses (i). [237]

Sect. 117 of the Education Act, 1921 (f), exempts from the Act of 1888 assurances of land and personal estate to be laid out in the purchase of land for any educational purposes, but such assurances must be recorded in the books of the Board of Education as soon as may be after the execution of the deed or, if comprised in a will, after the death of the testator. This provision covers assurances under the Technical and Industrial Institutions Act, 1892 (k), which had to be enrolled in the books of the Charity Commissioners until that requirement was repealed by the Education Act, 1918 (l). [238]

Under sect. 5 of the Mortmain and Charitable Uses Act, 1891 (m), but subject to the savings in sect. 10, land (as defined in s. 3) may be assured by will to any charitable use, but must be sold within one year from the death of the testator or such extended period as may be determined by the High Court or the Charity Commissioners. If such a sale is not effected within the time prescribed the land vests in the Official Trustee of Charity Lands and the Act provides that the Charity Commissioners must take steps for ensuring a sale with all reasonable speed (n). If, however, land so devised or proposed to be purchased out of personal estate given for the purpose is required for actual occupation for the purposes of the charity and not as an investment the High Court or the Commissioners may authorise the retention or acquisition of such land (o).

The proper persons to carry out a sale are the trustees to whom the land is devised for the charitable purposes, but it is otherwise if on the true construction of the gift it is one of the proceeds only of a sale directed to be made by the trustees of the will, in which case the gift is not within sects. 5, 6 and 8 at all (p).

It would appear that the court and the Charity Commissioners have jurisdiction to extend the time for sale after the prescribed period of one year has expired without a sale having been effected, but the

(f) 7 Statutes 193.

(h) 2 Statutes 388.

(i) *Walker v. Richardson* (1837), 2 M. & W. 882; 8 Digest 280, 536; *A.-G. v. Glyn* (1841), 12 Sim. 84; 8 Digest 281, 537; *Ashton v. Jones* (1860), 28 Beav. 460; 8 Digest 281, 538.

(k) 7 Statutes 289.

(l) 8 & 9 Geo. 5, c. 39.

(m) 2 Statutes 396.

(n) *Ibid.*, s. 6.

(o) *Ibid.*, s. 8.

(p) *Re Sidebottom, Beeley v. Waterhouse*, [1902] 2 Ch. 389, C. A.; 8 Digest 267, 291; *Re Ryland, Roper v. Ryland*, [1903] 1 Ch. 467; 8 Digest 267, 292.

(g) 17 Statutes 869.

statutory vesting in the Official Trustee of Charity Lands at the end of that period if there has been no sale is unavoidable (*g*).

The directions in regard to a sale within the prescribed period apply to a gift of a reversionary interest in land (*r*), and in such cases it is the practice of the Charity Commissioners to make an order under sect. 6 extending the time for sale until the expiration of one year from the date when the interest given to the charity falls into possession.

When a local authority are empowered by a private Act to accept gifts of lands for (*inter alia*) parks and to retain or dispose of as they may think fit any lands that may be acquired or become vested in them, it would appear that land of any quantity acquired by them for a park under a will need not be sold under sect. 5, and that it can be retained for occupation for the purpose for which it was devised without the necessity of any order being made under sect. 8 sanctioning its retention.

Sect. 23 (5) of the Education Act, 1902 (*s*), provided that the Mortmain and Charitable Uses Act, 1888 (*t*), and so much of the Mortmain and Charitable Uses Act, 1891 (*u*), as requires land assured by will to be sold should not apply to any assurances for the purpose of a school-house for an elementary school, and under sect. 117 of the Education Act, 1921 (*a*), all assurances of land or of personal estate to be laid out in the purchase of land for educational purposes are exempted from the Mortmain and Charitable Uses Acts, 1888 (*t*), 1891 (*u*) and 1892 (*b*). [239]

Registration.—The Charitable Donations Registration Act, 1812, sects. 1 and 2 (*c*), and the L.G.A., 1888, sect. 3 (xv.) (*d*), require, subject to certain exceptions, that memorials of charities founded or secured by any deed, will or other instrument should be registered with county councils, and under the Vestries Act, 1831, sect. 39 (*e*), the select vestry of any parish which adopts the Act is required to make out annually a list of estates and charitable foundations belonging to the parish with certain particulars. These statutory enactments have not been repealed but they are not observed. There is not otherwise any legal provision requiring the registration of charities except under the War Charities Act, 1916 (*f*), and the Blind Persons Act, 1920, sect. 3 (*g*), the material provisions of which are dealt with below (*h*).

The Land Registration Act, 1925, sect. 98 (*i*), provides for the registration of title in the case of lands of charities the legal estate in which is vested in either the administering trustees or the Official Trustee of Charity Lands, and for the entry on the register of restrictions against

(*g*) *Re Ryland, Roper v. Ryland*, [1903] 1 Ch. 467, at p. 474; 8 Digest 267, 292.

(*r*) *Re Hume, Forbes v. Hume*, [1895] 1 Ch. 422, C. A.; 8 Digest 266, 278.

(*s*) 2 Edw. 7, c. 42; repealed by the Education Act, 1921; 7 Statutes 225.

(*t*) 2 Statutes 385.

(*u*) *Ibid.*, 396.

(*a*) 7 Statutes 193.

(*b*) 2 Statutes 398.

(*c*) *Ibid.*, 313.

(*d*) 10 Statutes 689.

(*e*) 6 Statutes 120; and see s. 199 of the Metropolis Management Act, 1855, s. 199; 11 Statutes 933.

(*f*) 2 Statutes 400.

(*g*) 20 Statutes 595.

(*h*) See pp. 114, 119. The report of the H.O. Departmental Committee on the supervision of charities presented to Parliament in March, 1927 (Cmd. 2823), recommended (among other things) that the Charity Commissioners should be empowered to hold an inquiry into the affairs of any collecting charity on representation to them by certain local authorities, but not the institution of any universal system of supervision over collecting charities. A bill was subsequently introduced in Parliament containing provisions on these lines but has not proceeded beyond a second reading.

(*i*) 15 Statutes 404.

sales and other dispositions of such lands as are endowments within the jurisdiction of the Charity Commissioners under the Charitable Trusts Acts. [240]

DURATION OF CHARITABLE TRUSTS

Provided that a charitable trust is created so as to take effect within the limits of the rule against perpetuities (*k*), it may be created in perpetuity or for a limited time (*l*) or subject to a condition subsequent (*m*), and the rule against perpetuities does not apply to gifts over from one charity to another (*n*).

If there is an effectual gift to charity the carrying out of the particular charitable purpose indicated may be deferred indefinitely (*o*).

If on the true construction of the gift it is undisposed of, except for the limited time or subject to the prescribed condition, it remains with the donor or passes under his will or on his intestacy (*p*). A gift may be made as a subscription to a charitable object proposed to be brought into operation but found afterwards to be impracticable. If the gift is expressed to be conditional on the contemplated purpose being carried out or such a condition is reasonably to be inferred there is a resulting trust for the donor (*q*).

Subscriptions given to a fund which had been raised in connection with the Balkan War and had ceased operations without having expended all the moneys subscribed were ordered in similar circumstances to be repaid to the donors (*r*). On the other hand a general charitable intention is inferred and the surplus funds are applied *cy près* if the subscriptions were given under conditions indicating that the donors never expected to see their money again, for instance, gifts in connection with "flag day" collections or sums paid for admission to entertainments (*s*).

The identity of a charity created originally as a permanently endowed charity continues for the purpose of receiving a gift in augmentation of its funds notwithstanding that it has become merged in a group of charities the endowments of which have been consolidated by a scheme (*t*). [241]

ALTERATION OF CHARITABLE TRUSTS

A charitable trust, like any other trust, must be performed according to the terms of the instrument of foundation unless performance becomes impracticable. Before a charitable trust can be altered by any authority other than Parliament, it is necessary to establish a case of failure in whole or in part, and any alteration must be in accordance with the

(*k*) *Chamberlayne v. Brockett* (1872), 8 Ch. App. 206; 8 Digest 326, 1095; *Worthing Corp'n. v. Heather*, [1906] 2 Ch. 532; 8 Digest 328, 1105.

(*l*) *Re Sir Robert Peel's School* (1868), 3 Ch. App. 543; 8 Digest 380, 1935; 16 Digest 42, 440.

(*m*) *Re Tyler, Tyler v. Tyler*, [1891] 3 Ch. 252, C. A.; 8 Digest 327, 1100.

(*n*) *Chris's Hospital v. Grainger* (1849), 1 Mac. & G. 460; 8 Digest 324, 1060; 22 Digest 365, 3715; *Re Tyler, Tyler v. Tyler*, *supra*.

(*o*) *Chamberlayne v. Brockett*, *supra*.

(*p*) *Re Blunt's Trusts, Wigan v. Clinch*, [1904] 2 Ch. 767, 773; 8 Digest 323, 1055; and see *Re Stanford, Cambridge University v. A.-G.*, [1924] 1 Ch. 73; Digest (Supp.).

(*q*) *Re University of London Medical Sciences Institute Fund, Fowler v. A.-G.*, [1909] 2 Ch. 1, C. A.; 8 Digest 291, 690.

(*r*) *Re British Red Cross Balkan Fund, British Red Cross Society v. Johnson*, [1914] 2 Ch. 419; 25 Digest 526, 180.

(*s*) *Re Welsh Hospital (Netley) Fund, Thomas v. A.-G.*, [1921] 1 Ch. 655; 8 Digest 340, 1444.

(*t*) *Re Faraker*, [1912] 2 Ch. 488, C. A.; 8 Digest 311, 921.

principle of *cy près* and therefore provide for appropriation to some object or objects resembling the original object as nearly as possible (*u*).

A failure may arise at once from the original instrument being ambiguous (*a*) or non-existent (*b*), and in such cases the question whether the trust as expressed can be altered depends on whether the original instrument indicates a general charitable intention and an appropriation for other charitable purposes will only be directed if it does. Or the failure may occur after the lapse of time and be due to the indicated object ceasing to exist or becoming incapable of performance from an insufficiency of funds or of applicants for the benefits, or to the income becoming more than required for the prescribed purpose or to changes in the habits and customs of life.

When the trusts governing a charity are prescribed by statute (*c*) or by royal charter (*d*) they cannot be altered by the court or the Charity Commissioners, whose jurisdiction is conferred by reference to that exercised by the Court of Chancery (*e*). But if the case is one of altering part of the machinery of administration provided under the statutory trusts with the view of bringing the administration into better conformity with those trusts, the court and presumably the Commissioners may be able to make a scheme for the purpose (*f*).

[242]

An alteration of a charitable trust, if not required for the above-mentioned reason to be effected by Parliament, involves an application to the High Court or to the Charity Commissioners and the establishment of a scheme. The Charity Commissioners' ordinary jurisdiction to make schemes for charities under the Charitable Trusts Act, 1860 (*g*), has been made applicable, in some cases subject to modifications, to special classes of charities under other Acts, *e.g.* the Municipal Corpn. Act, 1883 (*h*), the Commons Act, 1899 (*i*), the Charitable Trusts Act, 1914 (*k*), the War Charities Act, 1916 (*l*), the Blind Persons Act, 1920, sect. 3 (*m*), and the L.G.A., 1929 (*n*), and sometimes under Acts regulating the administration of individual charities, *e.g.* Acts confirming schemes certified by the Commissioners to Parliament under sect. 54 of the Charitable Trusts Act, 1853 (*o*). [243]

It is, of course, within the power of Parliament to alter charitable trusts without restriction in regard to *cy près* or otherwise. Examples of such alterations are to be found in the Endowed Schools Act, 1869, sect. 30 (*p*), the Commons Act, 1876, sect. 19 (*q*), the Allotments Exten-

(*u*) The scope and effect of the *cy près* principle were explained in *Clephane v. Edinburgh Corpn.* (1869), L. R. 1 Sc. & Div. 417, at p. 421; 8 Digest 345, 1373 (*per Lord Westbury*), and by JESSEL, M.R., dealing with trusts for apprenticing and doles in *Re Campden Charities* (1881), 18 Ch. D. 310; 8 Digest 349, 1441.

(*a*) *Re Mann, Hardy v. A.-G.*, [1903] 1 Ch. 232; 8 Digest 257, 182.

(*b*) *Re Oney, Broadbent v. Barrow* (1885), 29 Ch. D. 560; 8 Digest 312, 925; *Re Davis, Hannen v. Hillyer*, [1902] 1 Ch. 876; 8 Digest 310, 908; and see *Re Wilson, Twentymen v. Simpson*, [1913] 1 Ch. 314; 8 Digest 313, 948.

(*c*) *Re Shrewsbury Grammar School* (1849), 1 Mac. & G. 324, at p. 333; 8 Digest 402, 2321; *A.-G. v. Christ's Hospital (Governors)*, [1896] 1 Ch. 879, at p. 888; 8 Digest 341, 1327.

(*d*) *A.-G. v. Christ's Hospital (Governors)*, *supra*.

(*e*) Charitable Trusts Act, 1860, s. 2; 2 Statutes 363.

(*f*) *A.-G. v. Wyggeston Hospital* (1849), 12 Beav. 113, at p. 123; 8 Digest 337, 1259.

(*g*) 2 Statutes 363. See title CHARITY COMMISSIONERS, *post*, p. 123.

(*h*) 10 Statutes 673.

(*i*) 2 Statutes 607.

(*k*) *Ibid.*, 399.

(*l*) *Ibid.*, 400.

(*m*) 20 Statutes 595.

(*n*) S. 19; 10 Statutes 896.

(*o*) 2 Statutes 341.

(*p*) 7 Statutes 251.

(*q*) 2 Statutes 594.

sion Act, 1882, sect. 4 (1) (*r*), and the City of London Parochial Charities Act, 1883 (*s*).

Sect. 30 of the Endowed Schools Act, 1869 (*t*), provided that in the case of any endowment not educational but applicable for doles in money or kind, marriage portions, redemption of prisoners and captives, relief of poor prisoners for debt, loans, apprenticeship fees, advancement in life or any purposes which have failed or become insignificant in comparison with the magnitude of the endowment, the Endowed Schools Commissioners, with the consent of the governing body, should be enabled by scheme under the Act and subject to certain conditions to divert the whole or any part of the endowment to educational purposes. This enactment is still in force, but in view of the greater provision since made by the State for educational purposes it has become practically obsolete. The powers and duties of the Endowed Schools Commissioners were transferred to the Charity Commissioners by sect. 7 of the Endowed Schools Act, 1874 (*u*). [244]

Sect. 19 of the Commons Act, 1876 (*a*), prohibits the use of certain fuel allotments and allotments for recreation grounds or any part thereof for any other purpose than those declared in the Act and award, but provides that the Charity Commissioners in the exercise of their ordinary jurisdiction under the Charitable Trusts Acts may authorise the use of a fuel allotment as a recreation ground and field gardens, or for either of those purposes, and may authorise the exchange of any fuel allotment or any part thereof for land of equal value situate within the parish or district for the benefit of the poor of which such allotment was set out. [245]

Sect. 4 of the Allotments Extension Act, 1882 (*r*), made it obligatory upon trustees holding or managing lands, the income from which is applicable in giving doles to poor persons of any parish or place in or adjoining that in which the lands are situate, to take steps for letting the lands in allotments unless the lands are otherwise used for the benefit of the parish as a recreation ground or otherwise for the enjoyment and general benefit of the inhabitants. The Charity Commissioners have jurisdiction under the Act in certain matters, and sect. 14 of the Act directs that they shall insert in every scheme made by them, in relation to any charity owning land other than buildings, authority to the trustees to set apart a portion of the lands for allotments. [246]

Under the Small Holdings and Allotments Act, 1908, sect. 33 (2) (*b*), trustees of charity land who are required or authorised by the Allotments Extension Act, 1882, sect. 4 (*r*), or any other Act to let lands in allotments may, instead of so letting the lands, sell or let them to the council of the borough, district or parish concerned upon terms approved by the Charity Commissioners, or if the charity is for educational purposes the Board of Education. [247]

Sect. 18 of the Commons Act, 1899 (*c*), empowered the Commissioners, on application by any district council or parish council interested, to deal by scheme with any provisions with respect to allotments for recreation grounds, field gardens or other public or parochial purposes contained in any Act or award relating to inclosure as if those provisions had been established by the founder in the case of a charity having a founder. It would appear that an application under this section for a scheme may be made by a borough council, looking to the definition

(*r*) 1 Statutes 250.

(*s*) 46 & 47 Vict. c. 36.

(*t*) 7 Statutes 251.

(*u*) 37 & 38 Vict. c. 87.

(*a*) 2 Statutes 594.

(*b*) 1 Statutes 263.

(*c*) 2 Statutes 611.

of "district council" in sect. 21 (3) of the L.G.A., 1894 (*d*), provided that it is not a county borough, as to which see sect. 35 of that Act and sect. 13 of the Commons Act, 1899 (*e*).

In view of the restriction in sect. 19 of the Commons Act, 1876 (*f*), on a sale or other disposition (except an exchange) of a fuel allotment, the question frequently arises whether an allotment is or is not a fuel allotment. The terms of local Acts and Awards relating to such allotments vary considerably. The trust may provide only for the cutting and taking away of turf or it may give in conjunction the right to take produce not intended exclusively for fuel but for some other purpose, *e.g.* fodder or material for thatching. In other cases the trust may provide that the trustees shall let the land or part of it and apply the rents in purchasing fuel for distribution. In such cases the question whether an allotment is or is not a fuel allotment must presumably depend on the actual words used in each case. It is conceived, however, that a trust which authorises a use of the land for other purposes as well as for taking or providing fuel does not make it a fuel allotment and so preclude a sale in proper circumstances. Schemes have been made by the Charity Commissioners under the Commons Act, 1899 (*g*), authorising sales or leases of such portions of fuel allotments as are not appropriated under the awards for cutting fuel.

The benefits of allotments for turbarry, pasture and other *profits à prendre* have often been restricted to such inhabitants of a place as occupy tenements under a specified limit of annual value. It is considered that this means ordinarily rateable value. On the principle that such trusts were intended for the benefit of the poor inhabitants and that they can be altered consistently with the *cy près* doctrine the Charity Commissioners have frequently made schemes under the Commons Act, 1899 (*g*), raising the limit of the annual value of the qualifying tenements. [248]

Similar schemes have been made by the Charity Commissioners for the appropriation of surplus rents of recreation grounds, whether allotted before or after the Inclosure Act, 1845 (*h*), towards the cost of providing a recreation room for the inhabitants. It would seem that a scheme can be made under the Act of 1899 (*g*) authorising a sale of land allotted for recreation but no longer required, and appropriation of the proceeds in the acquisition of other land more suitable for the purpose. Restrictions on the erection of buildings on and inclosures otherwise of lands of this kind are imposed by sect. 194 of the Law of Property Act, 1925 (*i*). [249]

The reason for the statutory alteration of charitable trusts effected under the City of London Parochial Charities Act of 1883 (*k*) was the lack of demand for the charities brought about by the city of London having become increasingly a place of business and not of residence, and this is a not uncommon cause of failure in large urban areas. Ordinarily gifts for the poor of a particular place cannot be made to extend outside the prescribed area (*l*), but there may be grounds for allowing such an appropriation (*m*). It is, however, not now

(*d*) 10 Statutes 792.

(*f*) *Ibid.*, 594.

(*j*) 15 Statutes 373; and see title COMMONS.

(*l*) *Re Campden Charities* (1881), 18 Ch. D. 310, at p. 328; 8 Digest 349, 1441.

(*m*) Halsbury (2nd ed.), Vol. 4, pp. 228, 229, and cf. *A.-G. v. Wansay* (1808), 15 Ves. 281; 8 Digest 349, 1436; *Re Latymer's Charity* (1869), L. R. 7 Eq. 353; 8 Digest 349, 1437.

(*e*) 2 Statutes 610.

(*g*) *Ibid.*, 607.

(*h*) *Ibid.*, 443.

(*k*) 46 & 47 Vict. c. 36.

generally necessary to resort to Parliament for authority to extend the area of benefit in such cases since the coming into operation of the Charitable Trusts Act, 1914(*n*). Under that Act the court or the Charity Commissioners, on application by at least a majority of the trustees, may by scheme extend the area of benefit of a charity which is restricted to any municipal borough or to any parish or defined area within a municipal borough, and is not solely educational and has been founded more than forty years, to any area within or comprising the borough as constituted for the time being or any adjacent parishes. The Act applies to the county of London as if it were a municipal borough but not to the city of London. Any scheme made under the Act may also provide for the application of the income of dole charities to other more modern and approved objects for the benefit of the poor of the extended area. [250]

Proposals for the establishment of a scheme under the Charitable Trusts Act, 1914(*n*), generally involve the inclusion of a considerable number of charities in a single comprehensive scheme, a course which is recommended, when practicable, on the ground that a consolidation of the management in the hands of a single body of trustees tends to lessen the expense of administration and prevent risk of an overlapping of benefits. For this reason it is generally considered desirable that all charities of a similar kind in the added areas should be included if possible in the scheme in return for the advantages that residents in those areas obtain by acquiring a qualification for the generally much larger charities of the central area.

When areas are altered by an Act of Parliament or Provisional Order for the ordinary purposes of local government, a provision is usually included to the effect that nothing therein shall prejudice, vary or affect any right, interest or jurisdiction in or over any charitable endowment. An example of this was to be found in sect. 9 of the Divided Parishes and Poor Law Amendment Act, 1876(*o*). [251]

It is the general practice to include a clause to the same effect in private bills containing provisions for the extension of boundaries of cities and boroughs. The words "charitable endowment" have sometimes been qualified in bills of this kind by the addition of the words "which now is applicable for the benefit of any of the existing parishes affected by this Act." The Charity Commissioners have expressed objection to the added words on the ground that the words "existing parishes" as so used mean parishes to be included in the new area and do not apply to the city or borough itself. Their practice generally in cases of this kind is to deprecate the inclusion in private bills of incidental provisions varying the areas of benefit of or in any other way altering the trusts governing charitable endowments, on the principle that alterations ought to be effected under the normal procedure and conditions prescribed by the ordinary law for the variation of such trusts.

Article 89 (14) of the Standing Orders of the House of Commons (1932) requires that a copy of every private bill containing clauses affecting charities shall be deposited at the office of the Charity Commissioners on or before December 18. This applies to bills whether originating in the House of Commons or the House of Lords. Under Article 89 of the Standing Orders of the House of Lords (1922) the Attorney-General makes a report to the House on any such clauses, and under Article

189 of the Standing Orders of the House of Commons he makes a similar report to that House. [252]

Where the area of benefit of a charity is divided into separate parishes or districts for civil or ecclesiastical purposes (*p*), the court has jurisdiction to apportion the endowments and income of the charity between the several areas comprised within the area prescribed in the trust (*q*), and the Charity Commissioners have jurisdiction under sects. 10 and 11 of the Charitable Trusts Amendment Act, 1855 (*r*), to apportion in a similar way the benefits of charities the income of which does not exceed £80 per annum. The last-mentioned jurisdiction was conferred before the Charity Commissioners obtained the general powers of making schemes which they now have under the Charitable Trusts Act, 1860 (*s*), but it has not been their usual practice to make apportionments of this kind either by order under the Act of 1855 or by scheme under the Act of 1860, their view being that the fluctuation of population and other conditions generally make an apportionment unreliable and only temporarily effective. [253]

CUSTODY AND MANAGEMENT OF THE PROPERTY OF CHARITIES

Prior to the coming into operation of the L.G.A., 1894 (*t*), which introduced the principle of local authorities having a statutory right of representation on bodies of trustees of local charities other than ecclesiastical charities, the administration of charities, including some of an eleemosynary nature, was sometimes in the hands of corporations exercising the normal functions of local government, but more usually it was, either under the original instruments of foundation or by usage, in the hands of individual trustees or "feoffees," incumbents of parishes, churchwardens, overseers, and corporations specially created for the purpose by royal charter or letters patent, *e.g.* colleges and hospitals or almshouses. In cases, however, in which schemes had been made by the court or the Charity Commissioners there was often a composite body of trustees consisting of such persons as the holders for the time being of specified offices such as incumbents, mayors, churchwardens, overseers and the like, representatives nominated by appropriate bodies such as councils of boroughs, boards of guardians, vestries of parishes and ratepayers, and persons appointed by co-optation. [254]

The changes effected under the Municipal Corpns. Acts, the L.G.A., 1894, and the later Acts mentioned at the head of this title in respect of the custody and control of charitable endowments are dealt with below. These changes have been principally directed to distinguishing between endowments held for purposes which are respectively ecclesiastical and non-ecclesiastical (*u*), and between what is generally called "parish property" and endowments of "charities" in the narrower sense (*a*), vesting the custody and whole control of "parish property" in the appropriate local authorities (*b*), conferring upon local authorities a right of representation on bodies of trustees managing

(*p*) *E.g.* under the L.G.A., 1894, s. 1 (3); 10 Statutes 774; or the Church Building Act, 1845; 6 Statutes 848; and earlier Acts for similar purposes.

(*q*) *Re West Ham Charities* (1848), 2 De G. & Sm. 218; 8 Digest 301, 796; *Re Lambeth Charities* (1853), 22 L. J. (Ch.) 959; 8 Digest 301, 799; *Re Campden Charities* (No. 2) (1883), 24 Ch. D. 218; 8 Digest 301, 800.

(*r*) 2 Statutes 349.

(*s*) 10 Statutes, 773.

(*a*) See *post*, p. 101.

(*s*) *Ibid.*, 363.

(*u*) See *post*, p. 97.

(*b*) See *post*, pp. 99, 110.

non-ecclesiastical charities (c), and to providing for the appointment of other persons to take the places of overseers (d) and boards of guardians (e) as custodians and trustees of all kinds of property held on charitable trusts, in consequence of the abolition of those offices. [255]

The personal position of trustees acting in the administration of charitable trusts does not differ substantially from that of trustees acting in an ordinary private trust. It is well settled that they should not be in a position in which their interests as individuals on the one hand and as trustees on the other are or may be in conflict. It is not proper, therefore, that they should be interested in the supply of work or goods to, or be tenants of lands of, the charity (f); but this disability does not appear to attach to a limited company of which a trustee is a director or shareholder (g). In ordinary circumstances a trustee of a charity is under the duty of taking such care of the property of the trust as he would take of his own property according to reasonable standards (h). With this view it is the practice of the Charity Commissioners when making schemes for the regulation of charities to include provisions for the holding of meetings, the keeping of minutes and accounts, the payment of all moneys of the charity into a separate banking account and the employment, so far as necessary, during the pleasure of the trustees, of a clerk and other officers and servants with appropriate remuneration (generally subject to the Commissioners' approval in each case), provided that no remuneration is paid to any trustee acting in any such capacity.

On similar principles trustees of charities cannot, unless expressly authorised to do so, delegate the performance of their duties. It is the practice of the Charity Commissioners in suitable circumstances to include in schemes a clause enabling trustees to appoint sub-committees for the performance of any duty which can be better performed in that way, e.g. the giving of benefits in cases of emergency, subject to report to, and confirmation by, the whole body of trustees.

In the case of charitable trusts, which are of a public nature, questions of management are decided according to the votes of a majority of the trustees (i). If the charity has a formal constitution, e.g. under a scheme established by the court or the Charity Commissioners, provision is usually made fixing a quorum for meetings, and the decision then is according to the votes of a majority of the trustees present at a duly constituted meeting, the chairman having a casting vote. Under sect. 16 of the Charitable Trusts Amendment Act, 1855 (k), a majority, not being less than three persons, can grant leases and this is so notwithstanding that the land may be vested in the Official Trustee of Charity Lands. Under sect. 12 of the Charitable Trusts Act, 1869 (l), a majority of the trustees present at a duly constituted meeting and voting have power to execute and do all assurances, acts and things for carrying out sales and other dispositions.

(c) See *post*, p. 104.

(d) See *post*, pp. 109 *et seq.*

(e) See *post*, p. 112.

(f) There is usually a provision to this effect in schemes made by the Charity Commissioners; see s. 14 (9) of the L.G.A., 1894; 10 Statutes 787.

(g) Cf. *Farrar v. Farrars, Ltd.* (1888), 40 Ch. D. 395; 9 Digest 34, 9.

(h) *Learoyd v. Whiteley* (1887), 12 App. Cas. 727, at p. 733; 43 Digest 856, 3038; and see 4 Halsbury (Hailsham ed.), pp. 321 *et seq.*

(i) *Re Whiteley, London (Bp.) v. Whiteley*, [1910] 1 Ch. 600; 8 Digest 377, 1882.

(k) 2 Statutes 350.

(l) *Ibid.*, 374.

Corporations specially created for the administration of hospitals and almshouses have generally consisted of a Master or Warden and the inmates, and it has sometimes been found that a body so constituted is not suitable for the management of lands of any considerable extent, the qualifications called for in respect of estate management being generally incompatible with those necessary for admission to almshouses. Neither the court nor the Charity Commissioners can dissolve such a corporation and the course generally followed when the trusteeship is varied by scheme has been to keep the old corporation in existence, but to divert all functions of management to a separate body of trustees or governors. If the benefits of the charity are confined to any specified place or places and the charity is not ecclesiastical a scheme made in such circumstances would ordinarily provide for the inclusion in the body of trustees or governors of a suitable number of representatives nominated by the appropriate local authority.

Under the Charitable Trustees Incorporation Act, 1872 (*m*), the Charity Commissioners are empowered upon a sufficient application to grant a certificate of registration as a corporate body of the trustees of any charity for religious, educational, literary, scientific, or public charitable purposes. The term "public charitable purposes" is defined in the Act as including all purposes within the Statute 43 Eliz. c. 4, and subject to the jurisdiction of the Court of Chancery, and the enactment therefore covers charities which are exempt from, as well as those which are within, the Charitable Trusts Acts. Resort to this Act is, however, comparatively rare in view of the constitution with perpetual succession of the Official Trustees of Charitable Funds and the Official Trustee of Charity Lands (*n*). [256]

STATE CONTROL OF CHARITIES

The principal means of remedying abuses in the administration of charitable trusts were formerly by inquisitions under commissions issued under statutes of 39 Eliz. c. 6 and 43 Eliz. c. 4 (*o*), and by resort to the Court of Chancery either by a private informant or by information filed by the Attorney-General.

Comprehensive inquiries into all endowed charities in England and Wales were made between 1818 and 1837 by commissioners appointed under a series of Acts passed during that period, and the reports of those commissioners, which were printed as parliamentary papers, brought abuses disclosed to the notice of the Attorney-General, by whom proceedings were instituted in many cases.

Since 1853 (*p*), jurisdiction in respect of endowed charities in England and Wales has been exercised by the Charity Commissioners. Legislation affecting certain classes of charities for which appeals are made to the public for subscriptions is dealt with below (*q*). [257]

(*m*) 2 Statutes 377.

(*n*) See title CHARITY COMMISSIONERS, *post*, p. 125.

(*o*) The records of such commissions, now collected and deposited at the Public Record Office, and indexed under counties (List and Index No. X.), often afford valuable information in cases of lost or ambiguous trusts. They cover the period from Elizabeth to Geo. 3.

(*p*) Charitable Trusts Act, 1853; 2 Statutes 322; and see title CHARITY COMMISSIONERS.

(*q*) See *post*, pp. 114, 119.

TAXATION

Charity property is, in general, subject to the ordinary law as regards liability for death duties payable in respect of property acquired on the deaths of donors, and for stamp duties and land tax, but exempt, subject to certain conditions and exceptions, from income tax (*r*). Death duties may be remitted in the case of pictures, prints, books, manuscripts, works of art or scientific collections of national, scientific or historical interest given for national purposes, or to any university, county council or municipal corporation (*s*), and there are express exemptions from legacy and succession duty in the case of certain articles bequeathed to or in trust for (amongst others) any body corporate for preservation and not for purpose of sale (*t*). Property held for public purposes and for charitable purposes is also exempt from duty under the Customs and Inland Revenue Act, 1885 (*u*).

The question of liability to land tax is sometimes one of difficulty, particularly in regard to deductions in respect of the tax from rentcharges belonging to charities. The first Land Tax Act of 1692 (4 Wm. & M., c. 1), levied a tax of four shillings in the pound on all real estate subject to certain exemptions, and sect. 5 of the Land Tax Act, 1798 (*a*), authorised the owners of lands subject to rentcharges and other yearly sums to deduct a corresponding amount from instalments of such rentcharges and yearly sums. Sect. 25 of the same Act exempted from the tax lands which before March 25, 1693, belonged to (*inter alia*) hospitals or almshouses for or in respect of any rents payable to them before 1693 to be disbursed for the immediate use and relief of the poor in them and lands belonging to them or settled to any charitable or pious use in that year and not then assessed. A fee farm rent payable to the Crown or any person deriving title from the Crown by purchase under the Acts 22 & 23 Charles 2, cc. 6, 24, is subject to deduction for land tax at the rate of four shillings in the pound under sects. 30 and 31 of the Act of 1798, and a deduction at a similar rate can be made by the land owner if the land tax has been redeemed at that rate; otherwise under sect. 31 of the Finance Act, 1896 (*b*), the only amount that can be deducted from instalments of rentcharges is an amount corresponding with the current rate in the district which cannot now exceed one shilling in the pound and may be less. If the tax was not charged on the rent or the property out of which it issues in 1693, there is exemption under the Act of 1798 and no deduction at all can be made. The exemptions in the Act of 1798 do not cover a case in which the objects of the charity are not poor in a hospital or almshouse. Under sect. 29 of that Act the exemption is expressed to apply to rents, etc., belonging in 1693 to a hospital or almshouse, "or settled to any charitable or pious uses as aforesaid," and the words "as aforesaid" appear to limit the exemption to the charitable uses mentioned in sect. 25.

[258]

(*r*) See 4 Halsbury (Hailsham ed.), pp. 241 to 255, and titles INCOME TAX and STAMP DUTIES.

(*s*) Finance Act, 1894, ss. 2 (1) (*e*) and 3; 8 Statutes 122, 123.

(*t*) Legacy Duty Act, 1799, s. 1; 8 Statutes 36; Stamp Act, 1815, Schedule, Part III.; 8 Statutes 48; Succession Duty Act, 1853, s. 18; 8 Statutes 63.

(*u*) 16 Statutes 557.

(*a*) 10 Statutes 182.

(*b*) *Ibid.*, 290.

RATEABILITY

Property of charities is not ordinarily exempt from the payment of local rates (*c*), and persons in occupation of charity property, such as almspeople, are strictly rateable (*d*). If, however, a local Act exempts lands given for charitable purposes from "all public taxes, charges and assessments whatsoever, civil or military," the exemption extends to poor rates (*e*), and if the property is in a town in which an Act with which the Towns Improvement Clauses Act, 1847, is incorporated is in force, the property is entitled to the exemption in sect. 168 (*f*) of that Act in favour of (among other things) any building exclusively used for the purpose of gratuitous education of the poor or of public charity (*g*). A home for ladies in reduced circumstances may be a "public charity" within this section (*h*). There is also an exemption from county, borough, parochial and other local rates under the Scientific Societies Act, 1843, sect. 1 (*i*), in the case of land, houses and buildings occupied by any society instituted for purposes of science, literature or the fine arts exclusively, provided that it is supported wholly or in part by voluntary subscriptions and no dividend, bonus, etc., is paid to the members.

Under sect. 2 (4) of the R. & V.A., 1925 (*k*), rating authorities are empowered to reduce or remit the payment of rates in cases of poverty, and this power has been usefully exercised in favour of almshouses with limited funds for their endowment.

Under the Poor Rate Exemption Act, 1833 (*l*), and sects. 2 and 69 (2) of the R. & V.A., 1925 (*m*), churches and registered places of worship are exempt from rates, and there are conditional exemptions for certain classes of schools under sect. 167 of the Education Act, 1921 (*n*), and the Sunday and Ragged Schools (Exemption from Rating) Act, 1869 (*o*).

See also title RATES AND RATING. [259]

THE POSITION OF CHARITIES UNDER GENERAL ACTS AFFECTING LOCAL AUTHORITIES

The Municipal Corpn. Acts.—The commission appointed in 1834 to inquire into municipal corporations in England and Wales reported that besides the property applicable to all municipal purposes various funds and revenues had been entrusted to such corporations for specific purposes, and that some of these were connected with charitable institutions and the administration of charity funds and had been the subject of abuse. The effect of the legislation which followed was to take away from municipal corporations the direct administration of charitable trusts other than those for public purposes and to confine their functions to the administration of the last-mentioned class of charitable trusts, a class which has been considerably augmented from time to time under various Acts. Thus sect. 71 of the Municipal Corpn. Act, 1835 (*p*),

(*c*) *Mersey Docks v. Cameron* (1865), 11 H. L. C. 443; 38 Digest 466, 286.

(*d*) *R. v. Munday* (1801), 1 East, 584; 38 Digest 452, 184; *R. v. Green* (1829), 9 B. & C. 203; 38 Digest 452, 185.

(*e*) *R. v. Scot* (1790), 3 Term Rep. 602; 38 Digest 459, 238.

(*f*) 18 Statutes 585.

(*g*) *Hall v. Derby Sanitary Authority* (1885), 16 Q. B. D. 163; 38 Digest 459, 239.

(*h*) *Shaw v. Halifax Corpn.*, [1915] 2 K. B. 170; 38 Digest 460, 241.

(*i*) 10 Statutes 477.

(*k*) 14 Statutes 620; and see *p*. 109.

(*m*) *Ibid.*, 618, 689.

(*o*) 14 Statutes 545.

(*l*) *Ibid.*, 500.

(*n*) 7 Statutes 211.

(*p*) 5 & 6 Wm. 4, c. 76 (repealed).

enacted that the custody and administration of land and personal estate held by a borough or any member or members of a borough on charitable trusts and all powers in respect of trusteeship should cease, and the administration and management of such endowments subsequently passed to bodies of individual trustees appointed by the Court of Chancery or, after 1860, by the Charity Commissioners. Some charitable trusts of this kind are, however, still under the administration of councils of boroughs by virtue of special Acts governing particular charities. [260]

It has been held that the Act of 1835 had not the effect of divesting the legal estates in lands of charities (*g*). Outstanding legal estates have been divested in many cases eventually in other ways, *e.g.* by schemes or orders of the Charity Commissioners vesting in the Official Trustee of Charity Lands, but in some cases they still remain in local government bodies. Similar provisions for the separation of ordinary public funds and property from those held on charitable trusts were included later in the Municipal Corpns. Act of 1882 (*r*).

Under the Municipal Corpns. Act, 1883 (*s*), the property of the unreformed corporations dissolved under that Act has been applied for the public benefit of the inhabitants under schemes made by the Charity Commissioners.

The promotion of many of the forms of charity mentioned above under the head of public purposes and of similar objects where the purpose is to benefit the inhabitants of a particular area, or even the poor inhabitants as a whole of a particular area, has been entrusted from time to time by the legislature to the appropriate local authority and so has come to form part of its normal functions. For the position occupied by local authorities in matters of this kind, see titles ALLOTMENTS, COMMONS, HOUSING, LIBRARIES and MUSEUMS, OPEN SPACES, SMALL HOLDINGS and MEMORIALS, WAR AND OTHER. Further reference is made to some of these objects below in connection with the jurisdiction exercised by the Charity Commissioners either under the Charitable Trusts Acts or other Acts dealing with the special subject-matter. [261]

L.G.A., 1894 (*t*). *Preliminary Observations.*—The L.G.A., 1894, brought into existence parish councils and parish meetings for rural parishes, altered the constitution of boards of guardians, replaced urban and rural sanitary authorities by urban and rural district councils and effected a redistribution of areas. It followed the principle established by the Municipal Corpns. Acts that such authorities should be responsible for activities relating to local government, in its more special aspect as such, by providing for a transfer to parish councils of the whole administration and management of charities having objects in the nature of public purposes affecting the inhabitants as a whole. Otherwise the principal object of the Act as respects charities was to give to parish councils by sect. 14 (*u*), and indirectly to other local authorities by sect. 33 (*a*), the right to appoint trustees to take the place of churchwardens and overseers and otherwise to obtain representation on bodies of trustees administering parochial non-ecclesiastical charities including those of an eleemosynary nature. With this view sect. 75 (*b*) of the

(*g*) *Christ's Hospital v. Grainger* (1848), 16 Sim. 83, at p. 102; 8 Digest 324, 1060.

(*r*) Ss. 118, 133, 134, 135; 10 Statutes 613, 619.

(*s*) 10 Statutes 673.

(*t*) *Ibid.*, 773.

(*u*) *Ibid.*, 786.

(*a*) *Ibid.*, 798.

(*b*) *Ibid.*, 821.

Act defined a "parochial charity" as meaning a charity the benefits of which are, or the separate distribution of the benefits of which is, confined to inhabitants of a single parish or of a single ancient ecclesiastical parish divided into two or more parishes or of not more than five neighbouring parishes, indicated certain purposes as constituting a charity an "ecclesiastical charity" and directed that, on application by any person interested, the Charity Commissioners should make provision for the apportionment and management of endowments of charities held in part only for such purpose (c).

The expression "ecclesiastical charity" includes a charity held in part only for ecclesiastical purposes until an apportionment has been made and, as defined in the Act, includes one which provides benefits for any members of any particular church or denomination as such. For this purpose all churches and denominations are on the same footing. If the benefits are confined to such persons as distinct from their merely having a preferential claim the charity is an ecclesiastical charity within the Act (d).

The term "parish" means for the purpose of the L.G.A., 1894, subject to any alteration of area made on or after April 1, 1927, by or in pursuance of any Act, a place for which immediately before April 1, 1927, a separate poor rate was or could be made or for which a separate overseer was or could be appointed (e), and every parish as so defined in a rural sanitary district is for the purposes of the L.G.A., 1894, a "rural parish" (f).

So far as regards charities the Act of 1894 was principally directed to defining the status of parish councils in relation to the administration of charities applicable within the area of rural parishes, but it provided that the powers, duties and liabilities of a parish council under the Act relating to (amongst other things) charities could be conferred with any necessary modifications on the councils of municipal boroughs and other urban districts by orders made by the M. of H. after consultation with the Charity Commissioners (g), and many such orders have been made.

The Act provided that there should be a parish meeting for every rural parish and a parish council, which should be a body corporate, if the population was, subject to certain exceptions and conditions, at least 300 according to the census of 1891 (h). Where a rural parish was co-extensive with a rural sanitary district the R.D.C. was given the powers of and was deemed to be the parish council (i). For small rural parishes having no separate parish council and not grouped with others under a common parish council the Act made special provision under which the parish meeting had or could acquire from the county council certain powers, duties and liabilities substantially similar (k). The L.G.A., 1933 (l), has repealed and substantially re-enacted these

(c) Under the Parochial Church Councils (Powers) Measure, 1921 (6 Statutes 73), provision substantially corresponding was made for the representation of parochial church councils on the governing bodies of ecclesiastical charities, but unlike s. 75 of the L.G.A., 1894, which provides for an apportionment between "ecclesiastical" and "non-ecclesiastical" endowments "for giving effect to this Act," i.e. giving effect to the rights of local authorities, the Measure contains no provision for apportionments.

(d) *Re Perry Almshouses, Re Ross's Charity*, [1899] 1 Ch. 21; 8 Digest 371, 1781; and see *A.-G. v. Calvert* (1857), 23 Beav. 248; 8 Digest 314, 949.

(e) R. & V.A., 1925, s. 68 (4); 14 Statutes 688.

(f) S. 1 (2); 10 Statutes 774.

(g) S. 33, now replaced by L.G.A., 1933, ss. 269 (3), 271; 26 Statutes, 449, 450.

(h) S. 1; 10 Statutes 774.

(i) S. 36 (4); *ibid.*, 801.

(k) S. 19; *ibid.*, 790.

(l) Ss. 43 *et seq.*; 26 Statutes 326.

provisions, but with certain modifications in regard to the population necessary as a qualification for the constitution of a parish council and other matters. [262]

Acquisition of Property.—Sects. 5 (2) (c) and 19 (7) of the L.G.A., 1894 (*m*), vested in the parish council or the chairman of the parish meeting and the overseers of a rural parish without a parish council, subject to all trusts and liabilities, the legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish other than property connected with the affairs of the church or held for an ecclesiastical charity.

“Affairs of the church,” which is an expression used also in later Acts in the same connection, is defined by the L.G.A., 1894, sect. 75 (*n*), as including the distribution of offertories or other collections made in any church, but there is no exhaustive definition of it.

These provisions transferred the legal estate but not the management. The management in the case of parish councils was dealt with by sect. 6 (1) (c) (iii.) of the L.G.A., 1894 (*o*), which is expressed as covering the holding or management of parish property (with a similar exception as to church affairs or ecclesiastical charities), and village greens and allotments. The meaning of the term “parish property” is discussed below. (See *post*, p. 101, and title PARISH PROPERTY.)

The churchwardens and overseers were in a limited sense a corporation under sect. 17 of the Poor Relief Act, 1819 (*p*), for holding lands belonging to a parish, including sometimes property held on charitable trusts such as allotments under inclosure awards and sites for schools, etc., under the School Sites Acts (*q*). In other respects they were not a corporation. In the city of London they were a *quasi*-corporation for the purpose of holding land and for the purpose of the devolution of property (*r*). [263]

When the legal estate in any property was vested in the churchwardens and overseers by virtue of the Act of 1819, this consent as a corporation or of the parish council as their successors to an order of the Charity Commissioners under the Charitable Trusts Acts vesting such legal estate in some other person or body was made by the L.G.A., 1894, unnecessary (*s*). [264]

In so far as overseers remained associated with charities after the passing of the L.G.A., 1894, in respect of the holding of the property of charities or of the administration of the income of charities, the position was altered by the R. & V.A., 1925 (*t*), sect. 62 of which abolished overseers and provided machinery by means of the Overseers Order, 1927 (*u*), for a transfer of their interests in charities.

The abolition under the R. & V.A., 1925, of the office of overseer involved the dissolution of the corporate body of churchwardens and overseers and the legal estate in such property as they held for charities consequently became outstanding. In such cases a scheme of the Charity Commissioners or, if the endowment is held for educational

(*m*) 10 Statutes 777, 791.

(*n*) *Ibid.*, 822.

(*o*) *Ibid.*, 778.

(*p*) 14 Statutes 497.

(*q*) See School Sites Act, 1841, s. 7; 7 Statutes 277; and School Sites Act, 1844, s. 4; 7 Statutes 283. See also s. 5 of the Recreation Grounds Act, 1859; 12 Statutes 370.

(*r*) *Fell v. Official Trustee of Charity Lands*, [1898] 2 Ch. 44, at pp. 51, 59; 8 Digest 363, 1663.

(*s*) S. 52 (4); 10 Statutes 810; making inoperative the decision to the contrary in *Re Hackney Charities* (1864), 34 L. J. (Ch.) 169; 33 Digest 32, 162.

(*t*) 14 Statutes 682; see *post*, p. 109.

(*u*) S.R. & O., 1927, No. 55; and see *post*, p. 109.

purposes, the Board of Education, constituting fresh trustees and vesting the legal estate in the property in them or in the Official Trustee of Charity Lands has generally been required. The R. & V.A., 1925, did not repeal sect. 17 of the Poor Relief Act, 1819 (*a*), but it was repealed by sect. 307 of, and Part IV. of the Eleventh Schedule to the L.G.A., 1933. [265]

On the abolition of overseers by the R. & V.A., 1925, the chairman of a parish meeting and the overseers of a rural parish without a parish council, were replaced as a corporation for holding property of the kind covered by sect. 19 (7) of the L.G.A., 1894 (*b*), by the "representative body" of the parish under the Overseers Order, 1927 (*c*).

Similarly property of the kind dealt with in sects. 5 (2) (*c*) and 19 (7) of the L.G.A., 1894, was in urban parishes vested in the council of the borough or urban district by the Overseers Order, 1927, and sect. 115 of the L.G.A., 1929 (*d*), and sects. 5 (2) (*c*) and 19 (7) of the L.G.A., 1894, were repealed by the L.G.A., 1933. [266]

Under sect. 14 (1) (*e*) of the Act of 1894 any trustees may, subject to the approval of the Charity Commissioners, transfer to the parish council or to persons appointed by the parish council any property held for the purposes of a public recreation ground or of public meetings or of allotments, whether under Inclosure Acts or otherwise, for the benefit of the inhabitants of a rural parish or any of them or for any public purpose connected with a rural parish except for an ecclesiastical charity. In such cases the parish council, if they accept the transfer, or their appointees shall hold the property on the trusts and subject to the conditions on which the trustees held it. [267]

The term "trustees" includes persons administering or managing any charity or recreation ground or other property or thing in relation to which the word is used (*f*). [268]

It would appear that this provision is limited to charities the trusts of which provide for the enjoyment of land or buildings in specie by the inhabitants of a rural parish or any of them, and that it does not apply to lands held by churchwardens and overseers which are dealt with in sects. 5 (2) and 6 (1). It is also considered that eleemosynary charities are not within the scope of sect. 14 (1) (*g*), and it is not the practice of the Charity Commissioners to approve a proposal for transfer to a parish council or other local authority of property held upon a trust for eleemosynary purposes.

The word "allotments" in sect. 14 (1) appears to mean land allotted to be held either in specie for field gardens (*h*) or for other purposes as indicated in sect. 6 (1) (*c*) (*iii.*), and not to include land held for the purposes of letting and applying the income in doles or otherwise.

A transfer under this provision is equivalent to an appointment of new trustees, and inasmuch as it involves a formal conveyance by deed, the less expensive course of applying to the Charity Commissioners for a scheme constituting the local authority to be trustees and vesting in them or in the Official Trustee of Charity Lands is often adopted. [269]

If a local authority accept the administration of a charity for a public purpose, such as the maintenance of roads or footpaths or the

(a) 14 Statutes 497.

(b) 10 Statutes 791.

(c) S.R. & O., 1927, No. 55; 14 Statutes 770. See now, as to representative body, s. 47 (8), (4) of L.G.A., 1933; 26 Statutes 329.

(d) 10 Statutes 956.

(e) *Ibid.*, 786.

(f) L.G.A., 1894, s. 75; 10 Statutes 821.

(g) See *ante*, p. 97, *post*, p. 101.

(h) See *ante*, p. 82.

provision of lighting which is intended to benefit a part only of its area, it is generally necessary to provide by means of a differential rate that that part of the whole area shall retain the benefit of the charity. That course is generally prescribed wherever possible when the administration of a charity for a purpose of this kind is transferred to a local authority under a scheme made by the Charity Commissioners.

Sect. 8 (1) (i) of the Act of 1894 conferred also on parish councils power to provide or acquire buildings for any purposes connected with parish business or with the powers or duties of the parish council or parish meeting, and land for such buildings. The section also empowered parish councils (sub-sect. (1) (h)) to accept and hold any gifts of property real or personal for the benefit of the inhabitants of the parish or any part thereof. These provisions enabled a parish council to acquire land for buildings connected with charities under their administration. It would appear, regard being had to sect. 14 (1) (k) referred to above, that the acceptance under sect. 8 (1) (h) of property already impressed with a defined trust must be subject to an implied obligation to observe such a trust. [270]

Local authorities have been also empowered from time to time by many general Acts (l) to acquire lands and buildings for other general public purposes for the benefit of the inhabitants as a whole of their areas. [271]

Since the coming into operation of the L.G.A., 1933, the position of parish councils and other local authorities in regard to the acquisition of property is governed by Part VII. of that Act which (m) consolidates the earlier statutory enactments with certain amendments. [272]

Property vested or transferred or otherwise acquired under the above provisions of the L.G.A., 1894, is generally called "parish property." The expression is used in the Act of 1894 (n), but it is not defined in it. It would seem to consist of various kinds of property held for the benefit of a parish and its inhabitants generally, and as a whole as distinct from particular classes or sections of the inhabitants and in particular poor inhabitants as recipients of the benefits of eleemosynary charities. As examples of "parish property" may be mentioned old parish workhouses and poor houses acquired by overseers before boards of guardians came into existence under the Poor Law Amendment Act, 1834, village greens and allotments for recreation, field gardens and otherwise for the benefit of the inhabitants or any of them, property acquired by parish councils under sect. 8 (1) (i), and property transferred to parish councils under sect. 14 (1) (k) by individual trustees and impressed with trusts for use as public recreation grounds, places for public meetings, allotments whether under Inclosure Acts or otherwise and any other property (e.g. a parochial office or vestry room) held for any public purpose connected with a rural parish except for an ecclesiastical charity or an eleemosynary charity. The term "parish property" was defined in sect. 115 (6) of the L.G.A., 1929 (o), for the purpose of that section, viz. sales and other dispositions of parish property generally, and as so defined the expression excluded property given or bequeathed by way of charitable donation or allotted in right of some charitable donation or otherwise for the poor persons of any

(i) 10 Statutes 780.

(l) See *ante*, p. 97.

(n) See ss. 6 (1) (c) (iii.), 8 (1) (i), 52 (1); 10 Statutes 773, 780, 809. For definition in L.G.A., 1933, see *post*, p. 114.

(o) *Ibid.*, 956; see *post*, p. 113.

(k) *Ibid.*, 786.

(m) 26 Statutes 391 *et seq.*

parish or parishes if the income is not applicable to the general benefit of the ratepayers, parishioners or inhabitants. [273]

By sects. 113 and 115 of the L.G.A., 1929 (*oo*), a distinction is drawn between property of a poor law authority and "parish property." "Parish property" within the meaning of sect. 115 means what is really property of the parish and therefore includes a village green vested in guardians but not property held by guardians for poor law purposes (*p*).

The L.G.A., 1933, carries out a recommendation made in the interim report of the Local Government and Public Health Consolidation Committee presented to Parliament in March, 1933 (*q*), that in so far as there was anything in the existing law to distinguish property acquired under sect. 8 of the L.G.A., 1894, and other kinds of "parish property," so far as rural parishes were concerned, the distinction should be abandoned, and that the powers of that Act in regard to sales, exchanges and lettings of parish land and the provisions relating to proceeds of sales should apply to parish property as defined in sect. 115 (6) of the L.G.A., 1929 (*r*). The report also recommended that the provisions relating to the sale or letting of other lands vested in borough councils and urban district councils should be made to apply to the sale or letting of "parish property" and also to exhausted parish lands arising under inclosure awards, whether falling within the Highway Acts, 1835 and 1845 or the Sale of Exhausted Parish Lands Act, 1876, with a special provision requiring the proceeds of such sales to be applied for the benefit of the parish (*s*). [274]

Local authorities generally are empowered by sect. 114 of the Housing Act, 1925 (*t*), to accept donations of land or money for the purposes of that Act, but except parish councils and other local authorities on whom the powers of a parish council in this respect had been conferred, local authorities were not expressly empowered by any general Act to accept gifts prior to the coming into operation of the L.G.A., 1933.

In order to alter this somewhat anomalous position borough councils have frequently included in private bills provisions designed to enable them to accept, hold and administer gifts of property for the benefit of the inhabitants of their area or for any public purpose therein and in connection therewith to execute works at the cost of the rates. [275]

There is, however, no longer any need for the inclusion of clauses of this nature in private bills, as sect. 268 of the L.G.A., 1933 (*u*), enables any local authority, subject to conditions stated in the section, to accept, hold and administer any gift of property, whether real or personal, for any local public purpose, or for the benefit of the inhabitants of the area or of some part thereof, with the exception of gifts of property which when accepted would be held in trust for an ecclesiastical charity or for an eleemosynary charity. Under sect. 305 the terms "affairs of the church" and "ecclesiastical charity" have the same meaning as in the L.G.A., 1894, and "local authority" means the council of a county, county borough, county district or rural parish. The term "eleemosynary charity" is not defined, but is generally understood to mean an almshouse or a charity the trusts of which require or involve a distribution of money or other benefits among individual poor persons. [276]

(*oo*) 10 Statutes 953, 956; see *post*, p. 113.

(*p*) *London (City) Corp. v. L.C.C.*, [1931] 1 K. B. 25, *per* SCRUTTON, L.J., at p. 33; Digest (Supp.).

(*q*) Cmd. 4272, para. 97.

(*r*) 10 Statutes 956.

(*s*) See L.G.A., 1933, ss. 164—166, 169, 170, and the definition of "parish property" in s. 305; 26 Statutes 397, 399, 467.

(*t*) 13 Statutes 1064.

(*u*) 26 Statutes 449.

Transfer of Powers, Duties and Liabilities.—Sect. 6 (1) of the L.G.A., 1894 (a), provided for a transfer to parish councils of the powers, duties and liabilities of (1) vestries, except so far as relating to the affairs of the church or to ecclesiastical charities; (2) churchwardens, except so far as relating to the affairs of the church or to charities or being powers and duties of overseers; and (3) overseers, or churchwardens and overseers with respect to the holding or management of parish property not being property relating to affairs of the church or held for an ecclesiastical charity, and the holding or management of village greens or of allotments whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants or any of them. The powers, duties and liabilities transferred under these provisions are those referable to property vested in parish councils by sect. 5 (2) (c) of the L.G.A., 1894. [277]

It was open to doubt whether sect. 19 of the Act of 1894 extended the operation of sect. 6 (1) so as to transfer these powers of the overseers or the churchwardens and overseers to the parish meeting of a rural parish without a parish council, but the point is not now of importance because provision is made by the Overseers Order, 1927 (b), for transfer of these powers and duties to parish meetings.

In the L.G.A., 1894, the term "vestry" means the inhabitants of the parish whether in vestry assembled or not and includes any select vestry either by statute or at common law (c). [278]

The L.G.A., 1933, completed the transfer to local authorities generally of all, if any, remaining civil functions of vestries and churchwardens, and by sect. 269 (1) (d) provides for a transfer to the councils of all boroughs and urban districts of all subsisting functions and liabilities of vestries and churchwardens of all parishes in those respective areas except so far as relating to the affairs of the church (defined as in the Act of 1894) or to charities. The L.G.A., 1894, and the Overseers Order, 1927, had already transferred to local authorities, rural and urban, practically all (e) powers, duties and liabilities of vestries, churchwardens and overseers in relation to "parish property," and the Act apparently leaves the position in respect of charities, *i.e.* both ecclesiastical and non-ecclesiastical, to be governed by the existing law. In many boroughs and urban districts the powers of a parish council with respect to charities have been conferred on borough or urban district councils by orders of the Local Government Board or the M. of H. made under sect. 33 of the L.G.A., 1894 (f). This section is repealed by the L.G.A., 1933, and reproduced in a shorter form in sects. 269 (3) and 271 of that Act (g), and a resort to an order under these sections, applying sect. 14 of the L.G.A., 1894, to the charities within a borough or urban district may, in some instances, be necessary. Sub-sect. (7) of sect. 33 of the Act of 1894 (f) required the M. of H. to consult the Charity Commissioners before making any order under that section with respect to charities, and this provision has not been repeated in sect. 271

(a) 10 Statutes 778.

(b) S.R. & O., 1927, No. 55; 14 Statutes 770; and see *post*, p. 110.

(c) L.G.A., 1894, s. 75; 10 Statutes 822.

(d) 26 Statutes 449.

(e) The civil functions supposed to be still in existence are stated at p. 15 of the interim report of the Local Government and Public Health Consolidation Committee presented to Parliament in March, 1933, Cmd. 4272. Similar transfer had already been made in Wales and Monmouthshire by s. 25 of the Welsh Church Act, 1914; 6 Statutes 1180.

(f) 10 Statutes 798.

(g) 26 Statutes 449, 450.

of the L.G.A., 1933, an order relates to a borough or urban district divided into wards, and appears only in sect. 269 (3). This sub-section provides that where a provision may be included in the order, for the appointment of the trustees of a charity being made by the council, on the nomination of the councillors of a certain ward or wards of the borough or urban district. A provision to the same effect may also be made, if necessary, where no order under sect. 271 of the Act is needed, and is frequently included in schemes made by the Charity Commissioners.

Sects. 14 (2) and 19 (5) of the L.G.A., 1894 (*h*) (which remain unaffected by the L.G.A., 1933), empowered parish councils and parish meetings to appoint trustees in the place of overseers in the case of any parochial charity (*i*), and in the case of a charity not ecclesiastical to appoint trustees also in the place of churchwardens. Parish councils and parish meetings also obtained under sect. 14 (3) power to appoint additional trustees not exceeding the number allowed by the Charity Commissioners in the case of a parochial charity which is not ecclesiastical and is administered by a body which does not include any persons elected by the ratepayers or parochial electors or inhabitants of the parish or appointed by the parish council or parish meeting, and under the same sub-section if such a charity is administered by a sole trustee the number of the trustees may with the Commissioners' approval be increased to three, one being nominated by the sole trustee and one by the parish council. The authority of the Charity Commissioners under sect. 14 (3) is generally given in the form of an order. Sect. 14 (4) transferred also to the parish council the powers of a vestry to appoint trustees or beneficiaries of non-ecclesiastical charities (*k*).

The above-mentioned provisions with respect to the appointment of trustees, except so far as the appointment is transferred from the vestry, do not apply to any charity until the expiration of forty years from the date of its foundation, or in the case of a charity founded before the Act by a donor or donors, any one of whom was living at the passing of the Act, until the expiration of forty years from the passing of the Act unless with the consent of the surviving donor or donors (*l*). These restrictions do not apply so as to prevent the Charity Commissioners from including trustees nominated by the appropriate local authority in a body of trustees constituted by a scheme established under their ordinary jurisdiction under the Charitable Trusts Acts (*m*), and though it is not the practice ordinarily to vary any part of a trust of recent foundation the trusteeship may be so altered in cases where it is desired by the parties interested and there is no substantial objection otherwise.

So far as regards the displacement of overseers as trustees of charities under sect. 14 (2), the provisions of that section became obsolete on the abolition of overseers by the R. & V.A., 1925, sect. 62 (*n*), and the appointment of trustees of charities in place of overseers is now regulated by the Overseers Order, 1927 (*o*). [279]

Where a parish was divided by the L.G.A., 1894, sect. 36 (3) of that Act enabled the county council by order to provide, subject to the approval of the Charity Commissioners so far as regards charities, for

(*h*) 10 Statutes 786, 790.

(*i*) Defined in s. 75; 10 Statutes 882; see *ante*, p. 97.

(*k*) For the nature of these powers, see *A.-G. v. Dalton* (1851), 13 Beav. 141; 8 Digest 301, 797; *Re Hayle's Estate* (1862), 31 Beav. 139; 8 Digest 371, 1779.

(*l*) S. 14 (8).

(*m*) See Charitable Trusts Act, 1860, s. 2; 2 Statutes 363.

(*n*) 14 Statutes 682.

(*o*) S.R. & O., 1927, No. 55; 14 Statutes 770; and see *post*, p. 109.

the application to different parts of that parish of the provisions of the Act with respect to the appointment of trustees or beneficiaries of a charity. Where parishes were grouped, sect. 38 (3) directed that the grouping order should provide for the application of the same provisions of the Act but without mention of the Charity Commissioners' approval being necessary.

These provisions are repealed by sect. 307 of, and the Eleventh Schedule to, the L.G.A., 1933, sect. 45 (p) of which provides for grouped parishes and sects. 140 *et seq.* (q), for alterations of boundaries, districts, parishes, etc. Under sect. 45 (2) a grouping order must make the necessary provisions for, among other things, the application to the parishes included in the group of any provisions of the L.G.A., 1894, with respect to the appointment of trustees and to beneficiaries of a parochial charity, so as to preserve the separate rights of each parish. As regards the position where parishes are divided under orders made by the M. of H. under sect. 46 of the L.G.A., 1929, and sects. 140 *et seq.* of the L.G.A., 1933, see *post*, p. 114. [280]

The provisions of sub-sect. (2) of sect. 14 of the L.G.A., 1894 (r), apply only by implication to the churchwardens "of a rural parish," and it has always been the practice to regard them as not applying in cases where the churchwardens are appointed for an area which is larger than a rural parish as defined in the Act. The beneficial area of the older charities in small places is generally the ancient ecclesiastical parish (s), which is frequently divided into smaller areas which may have or acquire the status of separate rural parishes. In such cases the practice has been that churchwardens appointed for the ancient parish cannot be displaced by trustees appointed by the parish council of a constituent rural parish, and effect has generally been given to the Act by means of a scheme made by the Charity Commissioners under the Charitable Trusts Acts. Similar views have been expressed by the Commissioners in connection with appointments by parish councils under sub-sect. (3) of sect. 14. The word "parish" in sub-sect. (3) means "rural parish." If more than one parish is interested, all can apply for authority to appoint a trustee or trustees or the appointment can be made by a joint committee appointed by the parish councils. In some cases of divided parishes an order may have been made as mentioned above under sect. 36 (3) of the L.G.A., 1894, or under the L.G.As., 1929 or 1933.

Under sect. 70 (2) any question of the validity of appointments under sect. 14 is to be determined by the Charity Commissioners (t). [281]

Appointments made by a parish council under sect. 14 operate automatically on the passing of the council's resolution and take effect from the date of such resolution. The person appointed need not be a member of the council. Under sub-sect. (7) of that section the period of office of trustees so appointed is four years. The Act does not contain any provision creating a vacancy in the office otherwise than by completion of the period of four years, or two years in the case of the first trustees appointed. A trustee appointed under sect. 14, therefore, who wishes to resign must be discharged by an order made by the Charity Commissioners under the Charitable Trusts Acts. This difficulty does not arise if the representation of a parish council is provided for in a scheme made by the Commissioners,

(p) 26 Statutes 327.

(q) *Ibid.*, 379.

(r) 10 Statutes 786.

(s) This is also held to be so if the word used is merely "parish," see *Re Sandbach School and Almshouse Foundation, A.-G. v. Crewe (Earl)*, [1901] 2 Ch. 317; 33 Digest 29, 137.

(t) 10 Statutes 820; and see also *post*, p. 109.

inasmuch as such schemes always contain express powers in regard to the vacation of office on resignation, ceasing to attend meetings and other usual grounds. It also does not arise when the appointment is made under the Overseers Order, 1927 (*u*), which confers a power to resign. [282]

From the fact that the period of office of trustees appointed under sect. 14 is fixed at four years (except as regards half the number first appointed), it is the practice of the Commissioners to regard appointments made by a parish council before the expiration of that period and in anticipation of any vacancy so arising as premature and of no legal effect. The case is the same where the power of appointment is conferred by a scheme or arises under the Overseers Order, 1927 (*a*). On similar grounds any such appointment expressed to be for a period less than that prescribed has generally been considered to be a good appointment for the prescribed period. [283]

Under sub-sect. (9) of sect. 14, trustees (as defined in sect. 75 of the Act) (*b*) of a parochial charity and also their wives and children are precluded from receiving any benefit from the charity. It would seem that "trustees" here are not confined to trustees appointed directly in pursuance of the Act. [284]

Private bills promoted by local authorities for the extension of a borough have sometimes contained a clause transferring to the council of the borough the property and powers of parish councils and rural district councils which are proposed to be abolished. In some cases charity property has not been expressly excepted from the operation of such a clause and there has been merely a general saving (in the common form) of "any right, interest or jurisdiction in or over any charitable endowment." As, however, in many cases of this kind the parish councils or rural district councils proposed to be abolished have had powers of appointing trustees of charities, the area of benefit of which might make a transfer to the borough council of the power of appointing trustees unsuitable, it has been the practice to insert in the above-mentioned general saving provision the word "power" before the word "right" and the words "or in connection with" after the word "over." In such cases a new body of trustees, including adequate representation of the council of the borough or of the wards in which the charities are operative, is generally constituted under a scheme made by the Charity Commissioners. These schemes sometimes provide for the council of the borough appointing representative trustees on the nomination or recommendation of the councillors elected for the wards concerned. In such cases the nomination or recommendation must be observed, and the provision is therefore really equivalent to conferring the power of appointment directly on the ward (*c*). Representation is also sometimes given in this way subject to a condition that the persons appointed shall reside in or conveniently near the beneficial area or have special knowledge of its circumstances. [285]

Disposal of Property.—The L.G.A., 1894, by sub-sect. (2) of sect. 8 (*d*), empowered parish councils to let and with the consent of the parish meeting to sell or exchange land and buildings vested in them, but as regards property held on a charitable trust it provided that lettings for more than one year, other than of allotments, and sales and exchanges should only be effected with such consent of the Charity Commissioners

(*u*) S.R. & O., 1927, No. 55; 14 Statutes 770; see *post*, p. 112.

(*a*) *Ibid.*; see *post*, p. 109.

(*b*) 10 Statutes 821.

(*c*) *R. v. Christ's Hospital Governors*, [1917] 1 K. B. 19; 8 Digest 389, 2089.

(*d*) 10 Statutes 781.

as is required under the Charitable Trusts Acts. The material provisions of the Charitable Trusts Acts in this connection are in sect. 29 of the Charitable Trusts Amendment Act, 1855 (*e*), which provides that it shall not be lawful for the trustees or persons acting in the administration of any charity to make or grant, otherwise than with the express authority of Parliament or of a court or judge of competent jurisdiction or according to a scheme legally established or with the approval of the Charity Commissioners, any sale, mortgage or charge or lease in reversion after more than three years of any existing term or for any term of life or in consideration wholly or in part of any fine or for any term of years exceeding twenty-one years. The power of the Commissioners to authorise sales has not been impaired by the Allotments Extension Act, 1882 (*f*). [286]

In some circumstances the powers of disposal above-mentioned could only be exercised prior to the L.G.A., 1894, subject also to the consent of the owners and ratepayers of the parish (*g*). Sect. 52 (1) of the Act of 1894 provided that in the case of dealings with parish property such powers and consents might be exercised and given by the parish meeting of the parish. Sect. 115 and the Seventh and Twelfth Schedules to the L.G.A., 1929 (*h*), so far as regards "parish property" as defined in sub-sect. (6) of sect. 115, abolished all need for the consent of ratepayers and owners of property and repealed sect. 52 (1) of the Act of 1894, but with a saving for recreation grounds, village greens and other open spaces dedicated to the use of the community and for the powers of parish councils under sect. 8 (2) of the Act of 1894. Paragraph I. of the Seventh Schedule to the Act of 1929 enabled the council, representative body or other persons in whom any parish property is vested to dispose of it with the approval of the Minister of Health, and in the case of property held for the benefit of a rural parish with the consent also of the parish meeting, but a letting for less than one year did not require either of these consents. [287]

The L.G.A., 1933, while repealing sub-sect. (2) of sect. 8 of the L.G.A., 1894, and sect. 115 (2) in and the Seventh Schedule to the L.G.A., 1929, reproduces the effect of the sub-section first mentioned in sects. 169, 170 of the Act (*i*), but extends the powers of letting, sale and exchange of land to the parish meeting of a rural parish without a parish council. The special provisions as to parish property in the Seventh Schedule to the Act of 1929 are not reproduced, and parish property will in rural parishes be let, sold or exchanged under sects. 169, 170 of the Act of 1933. A letting for more than a year of land held for charitable purposes, and a sale or exchange of such land will need the consent of the Charity Commissioners, or as respects an educational charity the consent of the Board of Education. Fresh provision for the disposal of lands of all other local authorities (*k*) without, however, any express saving of the jurisdiction of the Charity Commissioners and the Board of Education in respect of any such lands held on charitable trusts is made by the Act.

(*e*) 2 Statutes 353; and see title CHARITY COMMISSIONERS, *post*, p. 124.

(*f*) *Sutton Parish to Church* (1884), 26 Ch. D. 173; 42 Digest 6, 22.

(*g*) See The Union and Parish Property Act, 1835 (5 & 6 Wm. 4, c. 69), s. 3, the Parish Property and Parish Debts Act, 1842 (5 & 6 Vict. c. 18), s. 2, and the Poor Law Act, 1889 (52 & 53 Vict. c. 56), s. 8 (all now repealed by the L.G.A., 1929; 10 Statutes 883); the School Sites Act, 1841, s. 6; 7 Statutes 276; the Literary and Scientific Institutions Act, 1854, s. 6; 10 Statutes 483.

(*h*) 10 Statutes 956, 987, 1011.

(*i*) 26 Statutes 399.

(*k*) Ss. 164 *et seq.*; and see definition of "parish property" in s. 305; 26 Statutes 397, 467.

Local authorities have been authorised under various other Acts to dispose of land for charitable purposes of a general public nature. [288]

The School Sites Act, 1841 (*l*), enabled any corporation and any officers, justices of the peace, trustees or commissioners holding land for (*inter alia*) public, parochial, charitable or other purposes or objects to dispose, subject to certain consents, of land not exceeding one acre for the purposes of the Act. The powers of disposition conferred by this Act were supplemented under further School Sites Acts of 1844, 1849, 1851 and 1852 (*m*). Sect. 7 of the Act of 1841 enabled such grants to be made to any corporation or several corporations upon similar trusts. [289]

The Literary and Scientific Institutions Act, 1854 (*n*), enabled similar corporations, bodies and persons holding land for similar purposes to dispose, subject to similar consents, of land not exceeding one acre for institutions for the promotion of science, literature, the fine arts, adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms, public museums, galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs. In the case of property held upon trust for charitable purposes the consent of the Charity Commissioners is required under this Act. Under sect. 11 of the Act such grants may be made to any corporation or to several corporations.

Similar provision was made by the Places of Worship Sites Amendment Act, 1882 (*o*), in regard to grants for the purposes of the Places of Worship Sites Act, 1873 (*p*), and by the Recreation Grounds Act, 1859 (*q*).

The Public Libraries Act, 1892 (*r*), provided similar facilities for dispositions of land, with the exception of land in the administrative county of London and open spaces in urban districts having a population of 20,000 persons for the purposes of that Act, subject to similar consents, including in the case of "other charitable property" (which is distinguished from "parochial property") the consent of the Charity Commissioners.

The above-mentioned powers of disposition are now supplemented by the general provisions, already referred to, contained in sects. 164 *et seq.* of the L.G.A., 1933 (*s*). [290]

Other Matters. Accounts.—Trustees or persons acting in the administration of charities falling within the Charitable Trusts Acts are required by those Acts to keep accounts and to deliver certified copies to the Charity Commissioners in London, and, in the case of parochial charities, to the churchwardens for presentation to the vestry and insertion in the vestry minutes (*t*). Under sect. 14 (6) of the L.G.A., 1894 (*u*), trustees or persons acting in the administration of charities which are not ecclesiastical and are applicable for parishes in which a parish meeting is held are under the duty of delivering copies of such accounts to the chairman of the parish meeting of the parish or parishes in which the charities operate (instead of to the churchwardens) for presentation at the next general meeting of the parish meeting (instead of the vestry) and the insertion of a copy in the minutes of such meeting. All such copies are open to public inspection and copies are supplied on payment.

(*l*) 7 Statutes 274.

(*n*) 10 Statutes 481.

(*q*) 12 Statutes 369.

(*t*) Charitable Trusts Act, 1853, s. 10; Amendment Act, 1855, s. 44; 2 Statutes 357.

(*u*) 10 Statutes 787.

(*o*) 6 Statutes 1241.

(*r*) 13 Statutes 850.

(*m*) *Ibid.*, 282, 284, 286, 287.

(*p*) *Ibid.*, 1238.

(*s*) 26 Statutes 397.

Under the same sub-section the names of beneficiaries of dole charities have to be published annually in such form as the parish council or, where there is no parish council, the parish meeting think fit. This would seem to cover a requirement that the sums received shall be set opposite the names of the recipients.

Where the area of benefit of the charity is a parish within a borough or urban district, it would appear that the copy of the accounts should still be submitted to the vestry, because the reception of the copy is a function of the parish meeting, not of the parish council, and functions as to charities are excepted from the transfer to borough and district councils of the functions of the vestry and churchwardens made by sect. 269 of the L.G.A., 1933 (a). [291]

Schemes.—Under sect. 14 (5) of the L.G.A., of 1894 (b), parish councils, and where there is no parish council the chairman of the parish meeting, are entitled to receive the draft of every scheme relating to a non-ecclesiastical charity affecting a rural parish on or before publication under sect. 6 of the Charitable Trusts Act, 1860 (c), of the notice of the proposal to make such scheme. The practice of the Charity Commissioners is to communicate the drafts of schemes for non-ecclesiastical charities in all cases to local authorities of areas immediately concerned whether parish councils or of higher denomination. [292]

Custody of Documents.—The L.G.A., 1933, which repealed sect. 17 (8) and (9) of the L.G.A., 1894, by sect. 281 provided for custody of parochial documents in both urban and rural parishes. It is conceived that as sect. 281 (3) (d) does not provide for access by trustees, the section does not refer to documents belonging to a parochial non-ecclesiastical charity. [293]

Determination of Questions.—Under sect. 70 (2) of the L.G.A., 1894, the Charity Commissioners, at the request of any trustee, beneficiary or other person interested, are to determine any question arising or about to arise under the Act in regard to the appointment of trustees or beneficiaries of any charity or the persons in whom the property of any charity is vested. An appeal lies to the High Court within three months after such determination. The procedure in cases of appeals from such orders of the Charity Commissioners is as prescribed in sect. 8 of the Charitable Trusts Act, 1860 (e), and sects. 10 and 11 of the Charitable Trusts Act, 1869 (f).

A "determination" by the Charity Commissioners under sect. 70 (2) of the L.G.A., 1894 (g), may be given in the form of a letter, and if not appealed from within three months is conclusive (h). [294]

R. & V.A., 1925 (i), and Overseers Order, 1927 (k).—Sect. 1 of this Act transferred to the rating authority (which is defined as meaning the council of any county borough, urban district or rural district) the powers and duties of the overseers in relation to the making, levying and collection of rates and of any other persons having such powers by virtue of any local Act. Sect. 62 of the Act abolished the office of overseer and directed that provision should be made by Order in Council for the transfer to rating authorities or such other local authorities or persons as should seem expedient of the powers and duties of and any property vested in overseers and any other necessary matters consequential upon the abolition of the office of overseer. An Order in

(a) 26 Statutes 449.

(c) 2 Statutes 364.

(e) 2 Statutes 365.

(i) *A.-G. v. Hughes* (1899), 81 L. T. 679; 8 Digest 393, 2150.

(k) 14 Statutes 617.

(k) S.R. & O., 1927, No. 55; 14 Statutes 770.

(b) 10 Statutes 787.

(d) 26 Statutes 454.

(g) 10 Statutes 820.

(f) *Ibid.*, 374.

charities had the effect of dissolving the corporation and consequently of leaving the legal estate in the charity property outstanding (s). In such cases a scheme constituting a fresh body of trustees and vesting the property is generally required. If the corporate body was created by an Act abolition of it altogether and the substitution of another body could only be effected by another Act. The Act of 1925 and the Overseers Order, 1927, have caused difficulties also in connection with the trusteeship of charities by reason of the alterations made in rating areas and parishes as defined in sect. 68 of R. & V.A., 1925 (t), and cases of this kind have generally involved the establishment of a scheme for adjusting the position. [302]

Article 12 provides that the term of office of a trustee or member of a corporate body appointed under the Order shall be four years subject to resignation on giving notice. [303]

The remaining provisions of the Order deal with the service and signature of documents and other incidental matters, including savings for any case in which an order may have been made under sect. 33 of the L.G.A., 1894 (u), conferring on the council of a borough or urban district any powers, duties or liabilities of overseers or of a parish council, for transfers to parish councils made by the L.G.A., 1894, for powers as to charities conferred on parish councils by that Act, and for any right or interest in or the jurisdiction of the Charity Commissioners or Board of Education over any charitable endowment.

Neither the R. & V.A., 1925, nor the Overseers Order, 1927, applies to the administrative county of London. [304]

L.G.A., 1929 (a).—Sect. 1 of this Act transferred as from the appointed day and subject to certain exceptions the functions of all poor law authorities to county councils or councils of county boroughs and abolished existing poor law authorities, including boards of guardians. Sect. 134 defines the word "functions" as including powers and duties, and the term "poor law authority" as including a board of guardians. [305]

Boards of guardians were sometimes constituted trustees under instruments creating charitable trusts, and had not infrequently the duty of appointing one or more trustees under schemes established by the Charity Commissioners prior to the Act coming into operation. It would seem doubtful whether the word "functions" as used in sect. 1 of the Act and defined in sect. 134 covers a transfer of either the whole trusteeship of a charity or of the duty of nominating a trustee. On this point reference may be made to the wider definitions given to the word "powers" in other Acts (e.g. the L.G.A., 1888, sect. 100 (b)). For the purposes of the L.G.A., 1929, the scope of the term may be confined to such functions as were statutory in connection with poor law administration, but it is perhaps susceptible of a wider meaning. In view, however, of the redistribution of poor law areas made by the Act, and the rearrangement of areas for other civil purposes under Part IV. of the Act, an automatic transfer of the functions of guardians in respect of the trusteeship of charities has only been practicable in the rare cases where the area of the union is wholly comprised within that of the county or county borough, and in the majority of cases a scheme of the Charity Commissioners reconstituting bodies of trustees for charities which consist of or include representatives of guardians has been found to be necessary. [306]

Sect. 113 of the Act provides for a transfer of property held by

(s) See also *ante*, p. 99.

(u) 10 Statutes 798.

(t) 14 Statutes 686.

(a) *Ibid.*, 883 *et seq.*

(b) *Ibid.*, 762.

boards of guardians. Property held by a board of guardians on a charitable trust has been treated as so transferred for the purpose of the issue of certificates under the L.G. (Stock Transfer) Act, 1895 (c), as applied by paragraph 1 (c) of Part I. of the Ninth Schedule to the L.G.A., 1929. When this step has involved stock belonging to a charity being transferred to a poor law authority not directly interested or capable of administering the charity the establishment by the Charity Commissioners of a scheme has afforded the best means of adjusting the position. [307]

In the case of boards of guardians constituted or acting under a local Act, sect. 19 limited the functions transferred under sect. 1 to those of a board of guardians under the Poor Law Act, 1927 (d), and excepted from the operation of the Act any property vested in the board of guardians for charitable purposes, but provided that such cases should be dealt with by schemes made by the Charity Commissioners under their ordinary jurisdiction under the Charitable Trusts Acts and without the necessity of any application being made for the purpose. The Act of 1929 does not seem to dissolve a board of guardians incorporated by a local Act to whom sect. 19 of the Act applies. [308]

It would seem that the provision in sect. 19 conferring on the Charity Commissioners the power to make a scheme without the application required in ordinary cases under the Charitable Trusts Act, 1860 (e), may have been directed to regularising the machinery for managing the property, *e.g.* by an appointment of other trustees and a vesting of the property in them or in the Official Trustee of Charity Lands, and that it did not extend to authorise an alteration of the trust, otherwise, *e.g.* in regard to the appropriation of income. There are, however, only a few boards of guardians of this kind subject to the operation of the Act.

Sect. 115 of the Act transferred parish property vested in a board of guardians to (in the appropriate cases) councils of boroughs or urban districts, parish councils or, in the case of rural parishes having no parish council, to the representative body constituted under Art. 7 (1) of the Overseers Order, 1927 (f), for the holding of property of the parish, and enacted that certain provisions set out in the Seventh Schedule should apply to the sale, exchange, letting and disposal of parish property, but with a saving for recreation grounds, village greens and other open spaces and for the powers of parish councils in respect of letting, sale or exchange in sect. 8 (2) of the L.G.A., 1894 (g). The same section conferred on councils of boroughs and urban districts and on parish meetings of rural parishes not having a parish council the powers of executing works given to parish councils by sect. 8 (1) (i) of the L.G.A., 1894 (g). [309]

For the purpose of these provisions the term "parish property" was defined in sect. 115 (6) as excluding property given or bequeathed by way of charitable donation or allotted in right of some charitable donation or otherwise for the poor persons of any parish or parishes if the income is not applicable to the general benefit of the ratepayers, parishioners or inhabitants. The words "property given or bequeathed by way of charitable donation" are taken from sect. 2 of the Parish Property and Parish Debts Act, 1842 (h). The provisions of the L.G.A.,

(c) 10 Statutes 830. Repealed by the L.G.A., 1933, and replaced by s. 275 of that Act. (d) 12 Statutes 956.

(e) 2 Statutes 363; and see title CHARITY COMMISSIONERS, *post*, p. 123.

(f) S.R. & O., 1927, No. 55; 14 Statutes 770.

(g) 10 Statutes 780.

(h) 5 & 6 Vict. c. 18.

1929, in regard to the disposal of property are varied in certain respects by the L.G.A., 1933, sects. 164 *et seq.*, but the distinction between "parish property" (with a wider meaning than under the L.G.A., 1929) and other charitable endowments is preserved in the definition of the former sect. 305 of the Act of 1933 (*i*). [310]

A large number of charities have been affected by alterations of areas effected under Part IV. of the Act of 1929, and will be affected by alterations made under sect. 140 *et seq.* of the L.G.A., 1933 (*k*), viz. in respect of appointments by parish councils and other local authorities having similar powers of trustees under sect. 14 of the L.G.A., 1894 (*l*), or the Overseers Order, 1927 (*m*), or schemes made by the court or the Charity Commissioners. It has been the practice to include in Review Orders made by the Minister of Health under the L.G.A., 1929, a clause to the effect that any power of appointing trustees of a charity, subject to the jurisdiction of the Charity Commissioners, which was exercisable immediately before the appointed day by any district council, parish council or parish meeting within the county and which ceased to be exercisable in consequence of the abolition of that district council, parish council or parish meeting or any change in the area of a parish made by the Order, may after the appointed day be exercised by such district council, parish council or parish meeting as the Charity Commissioners may direct without prejudice to the Commissioners' jurisdiction to establish a scheme under the Charitable Trusts Acts. [311]

L.G.A., 1933 (*n*).—This is in the main a consolidating Act, but it includes amendments of the earlier Acts relating to local government in England and Wales exclusive (except as regards certain matters) of London, and it repeals certain Acts ceasing to have effect and a considerable number of other Acts which are superseded as the result of the consolidating and amending provisions. The material provisions affecting charities have been noticed above in the several places where the matters in question have been referred to. The principal changes made by the Act are in respect of (1) the conferring of power to hold land for statutory purposes without licence in mortmain (*o*); (2) the transfer to urban authorities of nearly all the remaining civil functions of vestries and churchwardens (*p*); (3) the conferring on local authorities generally of additional powers in respect of the acquisition and disposal of property whether "parish property" (as defined by the Act) (*q*) or property otherwise charitable (*r*); and (4) the conferring of additional powers enabling local authorities to accept gifts (*s*). [312]

War Charities Act, 1916 (*t*).—This Act introduced a system of registration by local authorities of a limited class of charities supported by means of funds collected from the public, viz. charities connected with the Great War and falling within the definition of "war charity" in the Act.

The Act provides (sect. 1) that it shall not be lawful to make an appeal to the public for donations or subscriptions in money or in kind for any war charity or to raise or attempt to raise money for any such charity by a bazaar, sale, entertainment or exhibition or by any similar means unless the charity is registered and except with the approval in writing of the committee of the charity. A local authority can

(*i*) 26 Statutes 397, 467.

(*k*) *Ibid.*, 379.

(*m*) S.R. & O., 1927, No. 55; 14 Statutes 770.

(*o*) See *ante*, p. 84.

(*r*) See *ante*, pp. 102, 107, 113.

(*l*) 10 Statutes 786.

(*n*) 26 Statutes 295.

(*q*) S. 305; 26 Statutes 467.

(*s*) See *ante*, p. 102.

(*t*) 2 Statutes 400.

exempt a charity from registration, but only on its being shown that the scope of its operations as regards the amount of subscriptions expected, its duration, or the area of collection or benefit will be so small as in the opinion of the registration authority to make registration unnecessary in the interests of the public (u). [313]

The term "war charity" is defined in sect. 10 as meaning, subject to certain exceptions therein mentioned, any fund, institution or association, whether established before or after the commencement of the Act, having for its object or amongst its objects the relief of suffering or distress, the supply of needs or comforts or any other charitable purposes connected with the War, unless in the case of a charity established before the War such object is subsidiary only to the principal purposes of the charity. Any question whether a charity is or is not a "war charity" is to be finally determined by the Charity Commissioners (a). A decision expressed in the form of a letter would appear to be sufficient under this section (b).

The Commissioners have decided under sect. 10 that the words "any other charitable purposes connected with the War" are to be construed *ejusdem generis* with the preceding purposes and that those purposes must involve physical and not merely mental distress.

In many cases funds have been raised for the benefit of individual men, wounded or otherwise in need of assistance on account of the War, and such funds have been registered on the basis of their being within the term "war charity" though they would not be legally charitable in the more usual meaning of the term. There has not, however, been any decision of the courts upon this point. On the other hand, some purposes which might be charitable in the usual sense, *e.g.* ex-service men's clubs, have been considered not to be "war charities" unless they include benevolent funds the benefit of which is confined to ex-service men who are in need of assistance on account of the War.

There has been no decision upon the question how large the area of collection must be before it can be said to be an appeal to the public, or the similar question how small it must be to justify a claim that a charity should be exempted from registration (c). [314]

Unless there are special circumstances, it has been considered that an offer of goods to the public for sale with the view of appropriating the profits or part of the profits to an object mentioned in sect. 10 of the Act is not an appeal to the public within sect. 1 of the Act.

For the purposes of the Act registration authorities are the Common Council of the City of London, the L.C.C. and the councils of municipal boroughs and urban districts in respect of charities whose "administrative centre" or principal office is situate in an area of this kind, and county councils in respect of charities whose administrative centres are situate in rural areas (d). In case of doubt the Charity Commissioners are to determine where the administrative centre is.

(u) Regulations made under s. 4 of the Act, S.R. & O., 1917, No. 161.

(a) See *Barber v. Chudley* (1922), 92 L. J. (K. B.) 711; Digest (Supp.).

(b) Cf. *A.-G. v. Hughes* (1899), 81 L. T. 679; 8 Digest 393, 2150.

(c) Cf., however, *Harms Incorporated and Chappell & Co. v. Martians Club, Ltd.*, [1927] 1 Ch. 526, C. A.; Digest (Supp.) (performances "in public" within ss. 1, 2 of the Copyright Act, 1911; 3 Statutes 720); *Nash v. Lynde*, [1929] A. C. 158; Digest (Supp.) (issue to the public of a company prospectus within ss. 81 (c) and 285 of the Companies (Consolidation) Act, 1908), and the cases referred to above, *ante*, p. 76, in connection with the distinction between trusts which benefit the community as a whole and those which benefit only a small section of it.

(d) S. 2; 2 Statutes 401. Any such council may act through a committee of the council which may comprise persons who are not members of the council.

The Act contemplates that a registration authority shall make inquiries before registering a charity, but registration cannot be refused unless the registration authority are satisfied that the charity is not established in good faith for charitable purposes or will not comply with the conditions imposed by the Act or that it will not be properly administered. The conditions imposed by the Act are stated in sect. 3 and require that the charity shall be administered by a responsible committee consisting of at least three persons, that proper minutes and accounts shall be kept, that the accounts shall be audited by some person approved by the registration authority, that copies of the accounts shall be sent to the registration authority, that all money received shall be paid into a separate account at a bank, that all particulars and information in regard to accounts and other relevant matters shall be furnished to the registration authority or the Charity Commissioners as may be required by them, and that the books and accounts shall be open to inspection by any person authorised by the registration authority or the Commissioners. In the event of registration being refused an appeal lies to the Commissioners (sect. 2 (4)).

Registration authorities are required to keep registers of charities registered by them under the Act and lists of charities refused registration and exempted from registration in forms containing such particulars as are prescribed by regulations made under the Act (e), and to send copies of the register and such lists to the Charity Commissioners for inclusion in a "combined register" of all charities registered and refused and exempted from registration respectively. Registration authorities are also under the duty of notifying to the Commissioners all changes in the registered particulars as notified to them by committees of charities.

The Charity Commissioners have expressed the view that when the name of a charity is changed the registration certificate originally issued should not be cancelled and a new certificate issued, but that a statement showing the change of name should be written on the original certificate. The case is not provided for in either the Act or the regulations made under it (f), but the above view gives due effect to the regulation made in March, 1918.

The Act does not provide for the case of a charity after it has been registered moving its administrative centre from the area of one registration authority to that of another, and accordingly the practice of the Charity Commissioners has been to regard the original registration as remaining unaffected by such a removal, subject only to a note being made in the register recording the alteration of this part of the registered particulars. Adequate supervision by the original registration authority may, however, be difficult in such circumstances.

With regard to war charities which have a central organisation and local branches under separate committees, it has been the practice to treat the local branches as merely agents of the central organisation and as not requiring to be separately registered in respect of their local operations, provided that the central organisation is registered and takes full responsibility for the administration of the branches including all matters of accounts. [315]

Charities supported entirely by voluntary contributions are exempted from the ordinary jurisdiction of the Charity Commissioners under the

(e) S.R. & O., 1916, No. 578.

(f) S.R. & O., 1918, No. 391.

Charitable Trusts Acts (*g*), and the principle of the War Charities Act was to leave it to registration authorities to discover the existence of charities within the Act which ought to be registered or exempted, to entertain applications for registration or exemption, to receive accounts and to exercise some measure of supervision over the administration of charities admitted to the register. While a charity remains on the register the powers of the Charity Commissioners are limited. [316]

Subject to an appeal to the Charity Commissioners, registration authorities have power under sect. 5 of the Act to remove a charity from the register upon being satisfied that any one or more of the grounds exist which would have justified them in refusing to register the charity (*h*).

For the purposes of an appeal from a registration authority's decision either to refuse registration or to remove a charity from the register, the Charity Commissioners have, under sect. 6 of the Act, all the powers of inquiry which they have in respect of charities within their ordinary jurisdiction under the Charitable Trusts Acts (*i*). Upon a charity being removed from the register the Commissioners can also exercise certain summary powers for protecting its funds and providing for their due appropriation in accordance with the trusts or to other objects *cy près*, viz. they can make stop orders on moneys in the custody of banks and other persons, order the payment or transfer of any funds of the charity to the Official Trustees of Charitable Funds, and make a scheme without an application being made to them by the committee. [317]

Under sect. 7 the summary powers conferred on the Charity Commissioners by sect. 5 in connection with the removal of charities from the register, and the powers of inquiry given by sect. 6 in connection with appeals, can be exercised by them if they are satisfied on the representation of a registration authority or chief officer of police that the administration of an unregistered war charity is open to objection on one or more of the grounds which justify a refusal of registration. In such cases, however, the Commissioners are not empowered to make a scheme without giving the charity a full opportunity of being heard. [318]

The powers of inquiry conferred on the Charity Commissioners by sect. 6 for the purposes of appeals are not expressly made applicable to the case of charities which have been registered but have been removed from the register without any appeal. It would seem, therefore, that the powers under the Charitable Trusts Acts of requiring accounts (*k*) may be excluded in such cases, perhaps on the supposition that if a charity has once been registered accounts should be in the possession of the registration authority. [319]

It would appear that an unregistered charity of which the administrative centre is abroad but which appeals to the public in England is subject to the operation of sect. 7, but not a charity which appeals for funds abroad though it may have an administrative centre in England. [320]

(*g*) Charitable Trusts Act, 1853, s. 62 ; 2 Statutes 344.

(*h*) See *ante*, p. 115.

(*i*) See title CHARITY COMMISSIONERS, *post*, p. 122.

(*k*) Charitable Trusts Act, 1853, s. 10 ; 2 Statutes 322 ; Charitable Trusts Amendment Act, 1855, ss. 44, 45 ; 2 Statutes 357. The Blind Persons Act, 1920, s. 3 ; 20 Statutes 595, expressly makes all these powers applicable in the case of charities for the blind.

Certain matters are specified as constituting offences against the Act, viz. appealing to the public without registration or exemption (sect. 1), failure to comply with a stop order or an order for payment or transfer to the Official Trustees of Charitable Funds (sect. 5 (2)), and the making of false representations in connection with applications for registration or exemption or the notification of changes requiring alterations in the registered particulars and other matters (sect. 8). Sect. 9 prescribes penalties in respect of offences against the Act, but the consent of the Charity Commissioners is required to the institution of proceedings. [321]

Regulations have been made under sect. 4 of the Act by the Charity Commissioners (and approved by the Home Secretary) on August 24 and October 9 and 31, 1916, February 6, 1917, and March 15, 1918 (*l*). They prescribe (*inter alia*) forms and procedure in connection with registrations, exemptions and refusals of registrations, the keeping and transmission of copies of register lists and accounts and the procedure on appeals. The main series is that of August 24, 1916. The regulation of October 9, 1916, deals further with accounts. The regulations of February 6, 1917 (which superseded that of October 31, 1916), deals with the grounds on which a charity can be exempted from registration. The regulation made in March, 1918, requires that the registered name of the charity shall be stated in full with the addition of the words "registered under the War Charities Act, 1916," on all appeals for subscriptions and notices of bazaars, sales, entertainments, etc. [322]

In the case of war charities in Scotland (to which the Act of 1916 applies subject to certain modifications) provision has been made by the legislature for winding up and the appropriation of surplus funds (*m*), but no similar provision has been made for such charities in England and Wales. It has been the practice of the Charity Commissioners to entertain applications from trustees of war charities in England and Wales for their approval by scheme or otherwise of proposals for the disposal of surplus funds, and it would seem that where the funds are dormant they are within the Commissioners' jurisdiction under the Charitable Trusts Acts, on the basis that charities which have ceased operations are no longer charities wholly or in part supported by voluntary contributions within sect. 62 of the Charitable Trusts Act, 1853 (*n*). It is, however, the practice in most cases to meet any doubt on this point by a preliminary order made under sect. 14 of the Charitable Trusts Act, 1869 (*o*), extending the Charitable Trusts Acts to the charity. In all cases of this kind brought to the notice of the Charity Commissioners the *cy près* principle mentioned above (*p*) is applied when the proposals involve a deviation from the original trust. [323]

In charities of this nature the manner in which the subscriptions are given does not generally leave room for any inference of a resulting trust for subscribers (*q*), and accordingly there is usually implied in the gift a general charitable intention which on failure or completion of the purpose involves appropriation of any remaining funds *cy près* (*r*). [324]

Under the Red Cross and Order of St. John Act, 1918 (*s*), a departure

(*l*) S.R. & O., 1916, Nos. 578, 717, 766; 1917, No. 161; 1918, No. 391.

(*m*) War Charities (Scotland) Act, 1919; 9 Geo. 5, c. 12.

(*n*) 2 Statutes 344; and see *Philipp v. A.-G.*, [1932] W. N. 100; Digest (Supp.).

(*o*) *Ibid.*, 375.

(*p*) See *ante*, p. 88.

(*q*) See *ante*, p. 87.

(*r*) *Re Welsh Hospital (Netley) Fund, Thomas v. A.-G.*, [1921] 1 Ch. 655; 8 Digest 349, 1444.

(*s*) 8 & 9 Geo. 5, c. xi, s. 2 (2).

from the *cy près* principle is admitted in certain cases. If a war charity has received a grant or assistance from the British Red Cross Society, the Order of St. John of Jerusalem or the Joint Committee of the Society and Order (formed for War purposes), the committee of the charity can, with the approval of the Charity Commissioners, either exercise with the consent of the Society, Order or Joint Committee the wide powers of appropriating surplus funds conferred by the Act on those bodies or transfer any property so received to the Society, Order or Joint Committee for appropriation to similar purposes. [325]

Police, Factories, etc. (Miscellaneous Provisions) Act, 1916, sect. 5 (t).—Police authorities were empowered, subject to the approval of the Home Secretary, to make regulations with respect to the places where and the conditions under which persons may be permitted to collect money or sell articles for the benefit of charitable or other purposes in streets and public places, and penalties were prescribed for contravention of any such regulations. [326]

Blind Persons Act, 1920 (u).—This Act made blind persons eligible for old age pensions at the age of fifty years and imposed on county councils, the Common Council of the City of London and the councils of county boroughs, whether or not in combination with other local authorities, the duty of making arrangements to the satisfaction of the Minister of Health for promoting the welfare of blind persons and in particular of providing and maintaining workshops, hostels, homes and other places for the reception of blind persons whether within or without their area.

It also made the War Charities Act, 1916 (a), with certain modifications applicable to charities for the blind which appeal to the public for subscriptions. The principal modifications are, as stated in sect. 3 of the Act, as follows. The appropriate registration authority in respect of the City of London is the Common Council of the City, and elsewhere it is the county council or county borough council; a registration authority may refuse to register a charity if satisfied that its objects are adequately attained by any other charity registered under the Act of 1916; the Charity Commissioners are enabled to exercise any of the powers given to them in sect. 6 of that Act on the removal of a charity from the register as well as on the occasions prescribed in the Act, and failure on the part of the responsible persons to observe any of the conditions mentioned in sect. 3 of the War Charities Act, 1916, is made an offence against that Act. [327]

A charity for the blind as defined in sect. 3 (3) of the Blind Persons Act, 1920 (b), means any fund, institution or association, whether established before or after the commencement of the Act, having or professing to have for its object or for one of its objects the provision of assistance in any form to blind persons or any other charitable purpose relating to blind persons, but does not include any fund, institution or association where these objects are subsidiary only to the principal purposes of the charity. [328]

Regulations were made under sect. 3 of the Act by the Charity Commissioners and approved by the Minister of Health on September 10, 1920 (c), prescribing forms and procedure substantially on the lines prescribed in the regulations made under the War Charities Act, 1916 (d).

(t) 12 Statutes 865.

(a) 2 Statutes 400.

(c) S.R. & O., 1920, No. 1696.

(u) 20 Statutes 593.

(b) 20 Statutes 596.

(d) See *ante*, p. 118.

The principal matters of difference are that the power of a registration authority to exempt a charity from registration can only be exercised with the consent of the Minister of Health, every person who is for the time being a member of the committee of any registered charity is responsible for observance of the conditions mentioned in sect. 3 of the War Charities Act, and provision is made pursuant to sect. 3 (2) of the Blind Persons Act for the transfer of charities for blind persons already registered under the War Charities Act to the register under the Blind Persons Act. [329]

Lands Clauses Consolidation Act, 1845 (e).—Lands of charities can be sold compulsorily or by agreement under this Act, and if the sale is carried out under the Act the restrictions in sect. 29 of the Charitable Trusts Amendment Act, 1855 (f), do not apply. If, however, the parties agree in regard to the price and otherwise, resort can be had to the jurisdiction of the Charity Commissioners, who can authorise a sale under sect. 24 of the Charitable Trusts Act, 1853 (g), if satisfied that it is sufficiently advantageous to the charity. In that case the purchase-money can be paid to the trustees or to the Official Trustees of Charitable Funds instead of having to be determined and dealt with in the manner prescribed by the Act of 1845 (h).

If the sale is effected under the Act and the purchase-money or compensation exceeds £200 it must, and if it exceeds £20 but does not exceed £200 it may, be paid into court, and is then applicable to one or more of the purposes prescribed in s. 69 of the Act, which include the purchase of other lands to be acquired on the same trusts, the costs of reinvestment in land being borne by the promoters of the undertaking to whom the original land was sold, or the money may be paid to any party who is absolutely entitled. The money cannot be paid out of court without the consent of the Charity Commissioners to trustees of a charity who have no power of sale, but it is otherwise if they have such a power (i) or if the charity is exempt under sect. 62 of the Charitable Trusts Act, 1853 (k), from the Commissioners' jurisdiction.

If, however, the land is purchased by one local authority from another, the purchase money need not be paid into court, if the M. of H. consents to the adoption of this course under sect. 176 of the L.G.A., 1933 (l), and the purchase-money may then be paid and applied as the Minister may determine.

When land of a charity is compulsorily acquired by a local authority with a view to its being used for such a purpose as widening a road, or if an easement over such land is acquired, the local authority are bound to take a formal conveyance (m) if required, and it is considered that trustees of charities should always make such a requirement.

[330]

(e) 2 Statutes 1113. See also title COMPULSORY PURCHASE OF LAND.

(f) *Ibid.*, 328.

(g) *Ibid.*, 328.

(h) Special arrangements have sometimes been made by the Charity Commissioners for facilitating sales of land of charities for other charitable purposes and dispensing with the usual notices inviting the submission of higher offers when compulsory powers could have been exercised, e.g. sales under the Land Settlement (Facilities) Act, 1919; 1 Statutes 288.

(i) *Re Sheffield Corpn.*, [1903] 1 Ch. 208; 8 Digest 359, 1563.

(k) 2 Statutes 344.

(l) 26 Statutes 403.

(m) *Re Cary-Elwes' Contract*, [1906] 2 Ch. 143; 17 Digest 232, 470.

LONDON

The London Government Act, 1899 (*n*), established metropolitan boroughs in London with consequential adjustments of boundaries of parishes by Orders in Council made under the Act, and transferred to borough councils the powers of vestries and other local bodies including some of the powers of the L.C.C. Under sect. 11 the council of each borough became the overseers of any parish within its area, and under sect. 15 commissioners were appointed to prepare orders and schemes for carrying the Act into effect.

The position in regard to charities was provided for in sect. 23, which excepted from transfers to borough councils any powers or duties of vestries relating to the affairs of the church or interests of a vestry in any church property. Sub-sect. (3) provided that churchwardens of parishes should cease to be overseers and that references in any Act to the churchwardens and overseers should, except in respect of affairs of the church, be construed as references to the borough council, and vested in such councils the legal interest in all property vested in the overseers or churchwardens and overseers except property connected with the affairs of the church or held for an ecclesiastical charity within the meaning of the L.G.A., 1894 (*o*). Sub-sect. (4) directed that provision should be made by scheme under the Act for substituting nominees of the borough council for overseers as trustees of any charity, due regard being had to the area benefited by the charity. Sub-sect. (5) provided that the Charity Commissioners should have for the purposes of the Act the same powers with respect to charities as under the L.G.A., 1894. Sub-sect. (6) provided that nothing in the Act should affect the right to the benefit of any charity or alter the charitable purposes to which any property of charities was then applicable.

Schemes were made in due course pursuant to the Act and regulate the trusteeship of charities affected by the Act, except in so far as the trusteeship may have been further altered since by schemes made by the Commissioners in exercise of their ordinary jurisdiction under the Charitable Trusts Acts.

Under the combined effect of sect. 31 (2) of the Act and sect. 44 of the Charitable Trusts Amendment Act, 1855 (*p*), the councils of metropolitan boroughs as successors of vestries appear to be entitled to receive copies of the accounts of non-ecclesiastical charities of parishes within their areas. [331]

The position of the City of London is governed by the City of London (Union of Parishes) Act, 1907 (*q*), under which the City forms one parish for civil purposes of which the Common Council of the City of London are the overseers. Sect. 7 of that Act provided that land and money funds held by the former overseers, whether alone or jointly with any other person or persons, should be transferred to the Official Trustee of Charity Lands and the Official Trustees of Charitable Funds respectively or as the Charity Commissioners should direct. [332]

(*n*) 11 Statutes 1225.

(*o*) 10 Statutes 773.

(*p*) 2 Statutes 357.

(*q*) 14 Statutes 599.

CHARITY COMMISSIONERS

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See also title : CHARITIES.

Preliminary Observations.—The ordinary jurisdiction of the Charity Commissioners is exercised under a series of Acts collectively referred to as the Charitable Trusts Acts, 1853 to 1925 (*a*), in respect of endowed charities which are not within exemptions stated in sect. 62 (*b*) of the Act of 1853. Exempted charities can, however, have the benefits of the Acts extended to them on application being made for the purpose (*c*). The expression “charity” is defined in sect. 66 of the Act of 1853 (*d*) by reference to the Statute of 43 Elizabeth, c. 4, and the jurisdiction of the Court of Chancery. The extent of the exemptions and particularly the exemption of charities “wholly supported by voluntary contributions” or “mixed” has given rise to much difficulty, and there have been many decisions of the courts (*e*).

Under the Board of Education Act, 1899, and three Orders in Council made under it (*f*), the jurisdiction formerly exercised by the Charity Commissioners in respect of charities applicable to educational purposes was transferred to the Board of Education, and for this purpose the Act imposed on the Commissioners the duty of determining the endowments or parts of endowments so applicable. [333]

The functions now performed by the Charity Commissioners may be conveniently considered under the following heads :

Jurisdiction under the Charitable Trusts Acts. Powers of Inquiry.—The Commissioners are empowered by sect. 9 of the Act of 1853 (*g*), from time to time as they may see fit, to examine and inquire into all charities in England and Wales, and this general provision is amplified by others further defining their powers and prescribing means for enforcing the supply to them and any assistant commissioner acting under their authority of accounts and all other necessary and relevant information (*h*). Failure to comply with orders made by the Commissioners

(*a*) 2 Statutes 320 *et seq.*

(*b*) *Ibid.*, 344.

(*c*) C.T.A., 1869, s. 14 ; 2 Statutes 375.

(*d*) 2 Statutes 346 ; see also C.T. Amendment Act, 1855, s. 48 ; 2 Statutes 359.

(*e*) These questions and the decided cases are fully discussed, 4 Halsbury (2nd ed.), at pp. 357 *et seq.*

(*f*) 7 Statutes 124.

(*g*) 2 Statutes 322.

(*h*) See C.T.A., 1853, ss. 10, 11, 12 ; C.T. Amendment Act, 1855, ss. 6, 7, 44, 45 ; C.T.A., 1860, s. 19 ; C.T.A., 1887, s. 2 ; 2 Statutes 322, 347, 357, 369, 382.

with this view renders persons in default liable to attachment on summary application by the Commissioners to the court (*i*). The Commissioners may also order any costs incurred in connection with inquiries to be paid out of the funds of the charity concerned (*k*). Under the Charity Inquiries (Expenses) Act, 1892 (*l*), the council of any county or county borough may contribute towards the expenses of any inquiries undertaken by the Commissioners into the charities generally of such areas. Reports made as the result of such inquiries on the charities of London, the West Riding of Yorkshire, Lancashire, Durham, Wiltshire, Berkshire, Devon, Anglesey, Carnarvon, Carmarthen, Denbigh, Flint, Glamorgan, Merioneth and Montgomery, have been published as parliamentary papers. [334]

Judicial Functions.—These functions include making orders by way of opinion and advice for the assistance and protection of trustees (*m*), certifying schemes to Parliament in cases in which a variation of the trust within the limits of the jurisdiction of the court is impossible or doubtful, with a view to the passing of Bills for the confirmation of such schemes (*n*), and making orders under the Charitable Trusts Act, 1860, removing and appointing trustees, vesting property and establishing schemes for the regulation of charities (*o*). The Commissioners may decline to exercise jurisdiction under the Act of 1860 in contentious cases (*p*).

Under sect. 2 of the Charitable Trusts Act, 1860 (*o*), the Commissioners have as full powers as were theretofore exercisable by the Court of Chancery in respect of the appointment and removal of trustees, the assurance, transfer, payment or vesting of any real or personal estate and the establishment of schemes, and orders are made under these powers without expense upon formal application made to the Commissioners by the trustees. If the income of the charity exceeds £50 (*q*) or the application is for the establishment of a scheme under the Charitable Trusts Act, 1914 (*r*), the application must be signed by at least a majority of the trustees or by some person authorised to sign it by a majority of the trustees present at a duly constituted meeting (*s*). If the income does not exceed £50, the application may be made by any one or more of the trustees or by any two or more inhabitants of the parish or place within which the charity is administered or applicable (*t*). All such applications once made cannot be withdrawn (*u*).

The procedure relating to schemes and orders for the removal and appointment of trustees involves the publication of notices inviting objections, and in these and other matters an appeal can be made to the High Court subject to compliance with certain conditions (*w*). Under these conditions a petition must be presented to the court within three calendar months next after the definitive publication of

(*i*) C.T.A., 1853, s. 14; C.T. Amendment Act, 1855, s. 9; C.T.A., 1860, s. 20; 2 Statutes 323, 348, 369.

(*k*) C.T.A., 1869, s. 9; 2 Statutes 373.

(*l*) 2 Statutes 399.

(*m*) C.T.A., 1853, s. 16; 2 Statutes 324.

(*n*) *Ibid.*, ss. 54—60; C.T. Amendment Act, 1855, s. 43; 2 Statutes 341, 357.

(*o*) Under s. 2; 2 Statutes 368.

(*p*) C.T.A., 1860, s. 5; 2 Statutes 364; and see *Re Burnham National Schools* (1873), L. R. 17 Eq. 241; 8 Digest 374, 1841.

(*q*) C.T.A., 1860, s. 4; 2 Statutes 364.

(*r*) 2 Statutes 399.

(*s*) C.T.A., 1869, s. 5; 2 Statutes 372.

(*t*) C.T.A., 1853, s. 43; 2 Statutes 336.

(*u*) *Re Poor's Lands Charity, Bethnal Green*, [1891] 3 Ch. 400; 8 Digest 391, 2114.

(*w*) C.T.A., 1860, s. 8; C.T.A., 1869, s. 11; 2 Statutes 365, 374.

the Commissioners' order. It has been held in a recent case (*a*) that the period of three months runs from the day on which the notice prescribed in sect. 7 of the Charitable Trusts Act, 1860, intimating that the order has been made is published.

The normal limits of the Commissioners' ordinary jurisdiction under the Charitable Trusts Acts in regard to the establishment of schemes were extended by the Charitable Trusts Act, 1911 (*b*), under which (subject to savings for educational charities and charities of very recent foundation) the benefits of charities which are restricted to any municipal borough or any parish or defined area within a municipal borough may be extended to any area within or comprising the borough, as constituted for the time being, or any adjacent parishes and the form of benefits may be varied.

The Commissioners are also empowered (*c*) to establish schemes for the management of places of religious worship which are ordinarily exempted from their jurisdiction and for prison charities under the Prison Charities Act, 1882, sect. 2 (*d*), on the application of a Secretary of State.

Among other *quasi*-judicial functions may be mentioned the power to make orders compromising claims by and against charities (*e*), to arbitrate on matters referred by two-thirds of the number of the trustees of any charity whether within the Charitable Trusts Acts or exempted therefrom (*f*), to ascertain and determine on the application of the parties interested what lands are charged with the payment of annual sums not exceeding £10 (*g*), and to certify the cessation of interest of officers or recipients of benefits of charities with a view to summary recovery of the possession of the property of a charity, *e.g.* a tenement in an almshouse occupied by an inmate who has been dismissed but refuses to give up possession (*h*). [335]

Powers in Connection with Property. (*A*) *Restrictions on Sales, etc.*—In ordinary circumstances lands belonging to a charity cannot be sold, mortgaged, charged or let in reversion after more than three years of any existing term or for any term of life or in consideration of a fine or for any term exceeding twenty-one years, except with the authority of Parliament or of a court of competent jurisdiction or according to a scheme legally established or with the approval of the Commissioners (*i*). As examples of such authority derived from an Act may be mentioned the power of trustees to sell under the Lands Clauses Consolidation Act, 1845 (*k*), and to grant leases and sell under the Landlord and Tenant Act, 1927 (*l*). These restrictions on sales and other dispositions are not affected by the fact that under the Settled

(*a*) *Re Diptford Parish Lands*, [1934] Ch. 151; Digest (Supp.), explaining and distinguishing the decision of Lord Romilly, M.R., in *Re Hackney Charities* (1864), 12 W. R., at p. 1131; 8 Digest 393, 2153; 13 Digest 273, 21; 33 Digest 32, 162.

(*b*) 2 Statutes 399.

(*c*) C.T.A., 1869, s. 15; 2 Statutes 375.

(*d*) 2 Statutes 381.

(*e*) C.T.A., 1853, s. 23; C.T. Amendment Act, 1855, s. 31; 2 Statutes 328, 354.

(*f*) C.T.A. 1853, s. 64; C.T. Amendment Act, 1855, s. 46; 2 Statutes 345, 358.

(*g*) C.T. Amendment Act, 1855, s. 33; 2 Statutes 354.

(*h*) C.T.A., 1860, s. 13; 2 Statutes 367.

(*i*) C.T. Amendment Act, 1855, s. 29; 2 Statutes 353. For the meaning of the words "scheme legally established," see *Re Mason's Orphanage*, [1896] 1 Ch. 596; 8 Digest 356, 1543. They do not cover a royal charter (*A.-G. v. National Hospital*, [1904] 2 Ch. 252; 8 Digest 357, 1544).

(*k*) 2 Statutes 1113; and see *ante*, p. 120.

(*l*) Ss. 4, 5, 14; 10 Statutes 375 *et seq.*

Land Act, 1925, sect. 29, trustees holding land on charitable trusts have the powers of a tenant for life including a power of sale (*m*). Sales, exchanges, mortgages and leases are authorised by the Commissioners when expedient (*n*), subject in the case of mortgages to provision being made for repayment of the moneys raised within a period not exceeding thirty years (*o*). In the same way the expenditure of funds of a charity can be authorised for improving its property (*p*), subject if the funds are permanent capital to their being replaced within a limited period. Exchanges when the lands are of equal value are generally carried out under the authority of the M. of A., inasmuch as the Minister's order effects a transfer of the legal interest in the property without the execution of a deed being necessary (*q*). The Commissioners can, however, authorise the making of payments for equality of exchange (*r*). In transactions affecting the property of charities the Commissioners have powers of charging on the property any costs of surveys (*s*). [336]

(*B*) *Preservation*.—Under this head the Commissioners are empowered on application made to them to make orders vesting the legal estate in land in the Official Trustee of Charity Lands, who is the secretary for the time being of the Commissioners and has corporate succession for the purpose of holding property of charities (*t*). Similarly orders may be made divesting the property (*u*) from the Official Trustee. The Official Trustee of Charity Lands does not perform any active duty in connection with the property, and the administering trustees have power to grant leases notwithstanding that the legal interest is in the Official Trustee (*a*). The Official Trustee is, however, generally made a party to a deed conveying land, and under an order of the Commissioners he concurs with the trustees in executing the deed.

The safety of money funds is ensured in a similar way by orders made by the Commissioners authorising the payment of cash and the transfer of stock to the Official Trustees of Charitable Funds who also are a corporate body (*b*). Under the Acts an order of this kind operates as an indemnity to any person making the payment or transfer and any company or body carrying out the transaction (*c*).

Under the Administration of Justice Act, 1928, sect. 15 (*d*), summary means are provided of obtaining transfer to the Official Trustees of funds of charities which have been paid into court under the Lands Clauses Act or otherwise.

Other matters in respect of which the Commissioners are enabled to promote the preservation of endowments of charities are the institution with the consent of the Attorney-General under the Charitable

(*m*) 17 Statutes 868.

(*n*) C.T.A., 1853, ss. 24, 21; 2 Statutes 328, 327.

(*o*) C.T. Amendment Act, 1855, s. 30; 2 Statutes 354.

(*p*) C.T.A., 1860, s. 15; 2 Statutes 368.

(*q*) Inclosure Act, 1845, s. 147; 2 Statutes 507, applied by Board of Agriculture Act, 1889, s. 2; 3 Statutes 401, and M. of A. & F. Act, 1919, s. 1; 3 Statutes 451.

(*r*) C.T. Amendment Act, 1855, s. 32; 2 Statutes 354.

(*s*) C.T.A., 1869, s. 9; 2 Statutes 373.

(*t*) C.T.A., 1853, ss. 47, 48; C.T. Amendment Act, 1855, s. 15; C.T.A., 1860, s. 2; C.T.A., 1887, s. 5; 2 Statutes 338, 350, 363, 384.

(*u*) C.T.A., 1853, s. 49; C.T.A., 1860, s. 2; 2 Statutes 339, 363.

(*a*) C.T. Amendment Act, 1855, s. 16; 2 Statutes 350.

(*b*) C.T.A., 1925; 2 Statutes 405.

(*c*) C.T.A., 1860, s. 23; 2 Statutes 370.

(*d*) 4 Statutes 214.

Trusts (Recovery) Act, 1891 (*e*), of proceedings for the recovery of small rentcharges with special facilities in regard to proving the existence of such charges. They may also enrol and record documents, copies of which may be given in evidence (*f*), and keep deeds and documents deposited at their office for safe custody (*g*). [337]

(*C*) *Control of Legal Proceedings*.—One of the principal objects of the Charitable Trusts Act, 1853, was to enable trustees of charities to obtain relief which previously could only be obtained at the expense of an application to the court, and accordingly such applications are now ordinarily precluded except with a certificate of the Commissioners authorising the institution of proceedings (*h*). This restriction is confined, however, to questions involving administration under the trusts governing the charity and does not affect the trustees' power to take all proper proceedings as owners of the charity property and for its protection against strangers (*i*). The Commissioners can on the other hand, when desirable, promote the institution of proceedings by the trustees (*k*) or by a majority of them (*l*), and can certify the case of a charity to the Attorney-General with a view to the institution by him of such proceedings as he may think desirable (*m*). [338]

Jurisdiction under other Acts.—Reference may be made to the title CHARITIES for the principal functions of the Charity Commissioners in connection with the Endowed Schools Acts, the Charitable Trustees Incorporation Act, 1872, the Municipal Corpns. Acts, 1882 and 1883, the Recreation Grounds Act, 1859, the Allotments Extension Act, 1882, the Mortmain and Charitable Uses Acts, 1888, 1891 and 1892, the L.G.A., 1894, the London Government Act, 1899, the Board of Education Act, 1899, and the Orders in Council made under it, the Commons Act, 1899, the City of London (Union of Parishes) Act, 1907, the War Charities Act, 1916, the Blind Persons Act, 1920, the Settled Land Act, 1925, the R. & V.A., 1925, and the Overseers Order, 1927, made under it, the L.G.A., 1929, and the L.G.A., 1933. [339]

(*e*) 2 Statutes 394; and see *Re Herbage Rents*, [1896] 2 Ch. 811; 8 Digest 352, 1489; *Re Alms Corn Charity*, [1901] 2 Ch. 750; 8 Digest 352, 1480.

(*f*) C.T. Amendment Act, 1855, s. 42; 2 Statutes 357.

(*g*) C.T.A., 1853, s. 53; 2 Statutes 341.

(*h*) C.T.A., 1853, s. 17; 2 Statutes 325.

(*i*) *Holme v. Guy* (1877), 5 Ch. D. 901, C. A.; 19 Digest 610, 352; *Rendall v. Blair* (1890), 45 Ch. D. 189; 8 Digest 393, 2159.

(*k*) C.T.A., 1853, s. 19; 2 Statutes 326.

(*l*) C.T.A., 1869, s. 13; 2 Statutes 374.

(*m*) C.T.A., 1853, s. 20; 2 Statutes 326.

CHARTERS OF INCORPORATION

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See also titles :

COMMON LAW CORPNS. ;
COUNTY BOROUGH ;
COUNTY BOROUGH, CREATION OF ;
COUNTY OF A CITY OR TOWN ;
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INTRODUCTORY AND HISTORICAL NOTE

The charters to be considered under this title are the Royal charters granted by the Crown, in exercise of the common law prerogative inherent in the Crown, whereby the inhabitants of a specific area are incorporated as a municipal corpn. and the area constituted a municipal borough. The corpn. so formed is, consequently, a common law corpn., even though most of its powers are regulated by the statutory provisions applied by the charter (*a*). Royal charters may, of course, be granted to other corpns. as, for example, to a company or institution (nowadays generally a charitable institution or professional organisation), or to individuals, as letters patent granting a title, but these are outside the scope of this work (*b*).

Although nowadays there can be no doubt as to whether a given area is or is not a municipal borough, and a definition of the expression "municipal borough," when used in Acts of Parliament, has been devised (*c*), it is practically impossible to give any clear indication of the essentials of a municipal borough prior to the Municipal Corpns.

(*a*) As to the position of a municipal corpn. as a common law corpn., see title COMMON LAW CORPNS., *post*. The statutory provisions applied by the charter are mentioned later in the text.

(*b*) See, generally, on this subject 8 Halsbury (2nd ed.), title "Corpns.," pp. 1 *et seq*.

(*c*) See Interpretation Act, 1889, s. 15 ; 18 Statutes 998.

Act, 1835. Blackstone said, "A borough is now understood to be a town, either corporate or not, that sendeth burgesses to Parliament" (*d*); but boroughs existed long prior to the inception of parliamentary government and are, undoubtedly, the most ancient form of localised administrative area still extant. Boroughs or burghs are mentioned in Domesday Book and have been, in some form or another—whether as manorial boroughs, free boroughs, chartered boroughs or otherwise—a part of the political history of England since the earliest records available. [340]

A municipal borough, as will be seen later (*e*), is now constituted only by charter from the Crown, but it is by no means certain that this was always the case; certainly this was the most usual form, but there are several instances of boroughs claiming by prescription or under a "lost" charter (*f*). The cities of London and Oxford are historical instances of corpns. claiming to exist by prescription, exercising considerable local government functions and electing their mayor and aldermen long before any charter of incorporation. Arundel, which is named in the Schedule of the Municipal Corpns. Act, 1835, and thereby expressly constituted a municipal borough, is mentioned by the Municipal Corpns. Commission of 1833 as a borough which purported to act in every way as a chartered borough but had never received, and, it is believed, has never to this day received, any charter.

Before mentioning briefly some of the major characteristics of the older charters, it is interesting to note that the Commission of 1833 reported upon 1,357 Crown charters; of these it has been computed that 61 were granted prior to 1199, a further 566 up to 1485, 598 more to 1688 and then a drop to 60 between the last date and the issue of the Report in 1835. From 1835 to 1888 (*g*) approximately 111 boroughs were incorporated, and since that date to the passing of the L.G.A., 1933 (*h*), a further 73 charters have been granted (*i*). [341]

The early charters made little or no attempt to define the classes of persons or the body by whom the privileges thereby granted were to be enjoyed. It is, in fact, as difficult to determine what constituted a "burgess" prior to the thirteenth century, as to define a "borough" of that date. Indeed most of the later charters, down to the Restoration, are equally vague. Thus we find the Municipal Corpns. Commission reporting in 1835 (*k*) on their examination of boroughs where the corpns. claiming was described as "The Twelve & Twenty-five" of Ludlow, or "the chamberlains, common council and freemen" of Alnwick, or "the bailiffs, burgesses and commonalty" of Ipswich; or

(*d*) 22nd ed.; Vol. I, p. 109. This would now be termed a parliamentary borough.

(*e*) *Post*, p. 131.

(*f*) Some commentators have suggested that a few of the oldest boroughs obtained their original charter from a Lord of the Manor in feudal times, in return for monetary annual payments, the grant being in the nature of a consideration for agreeing to a commuted form of taxation. The cases of Lincoln, which paid one hundred pounds in silver divided between the king and the earl, and Chester, which paid ten silver marks to the bishop, are also cited as examples of this form of commutation before the establishment of the feudal system. Of 246 boroughs reported upon by the Municipal Corpns. Commission of 1833, 17 claimed borough status by prescription or custom.

(*g*) When the L.G.A., 1888 (10 Statutes 686), was passed constituting the counties as administrative areas under elected county councils.

(*h*) See 26 Statutes 295.

(*i*) Most boroughs, of course, had more than one charter, and the numbers given in the text are no indication of the number of boroughs existing.

(*k*) See Reports: Cmd. 1835, XXIII.; 1837, XXV.

where charters had been granted to "the men of Bedford" or "my burgesses of Nottingham" or "my barons of the Cinque Ports."

This indefiniteness was probably one of the main sources from which the abuses of government by municipal corpsns. later arose. The legal entity, the actual corpn. with its right to hold land, to sue and be sued, to make bye-laws and do other acts as a "persona," involving as it did perpetual succession, was of gradual emergence; it is doubtful whether a corpn. had any recognised existence in law much before the sixteenth century. [342]

The earlier charters, as has been mentioned, dealt chiefly with the granting of privileges to a vaguely defined community of persons. The more usual privileges were those of incorporation, perpetual succession with common seal and power of "impleading" in the courts, licence to hold lands, freedom from taxation, representation in Parliament, franchise of markets (*l*) or fairs, incorporation as a county of itself and so cut off from the county at large, the appointment of coroners and other officers (*m*), the grant of a commission of the peace, rights to control trading, powers for "the better rule and government of the borough," and sometimes a limited right of taxation (*n*).

The chartered corpn. though probably intended to exercise control and guidance over all the local affairs of the borough, actually became by the beginning of the nineteenth century, in most instances, a hot-bed of corruption, and little or no attempt was made to exercise local government functions, even of the most elementary order. The term "rotten boroughs" was first used to mean those boroughs which were established by the Crown to obtain political representation, but seems to have been applied indiscriminately to most of the municipal boroughs at the time of the appointment of the Municipal Corpsns. Commission of 1833. The causes for this decay in importance cannot be noticed in detail here but briefly they may be said to be due to (1) the outflow of population from some of the older boroughs leaving sometimes only a handful of inhabitants (*o*); (2) the growth of the "close corpn." (*p*); (3) the creation of small boroughs in districts where government

(*l*) This was perhaps the most sought after of all privileges, for it enabled tolls, dues and fines to be levied and collected, thus providing corporate revenue. The other main source of revenue was from the estates, frequently extensive, held by the corpn.

(*m*) A typical list of officers, appointed by one of the more important boroughs, given in the Report of the Commission of 1833 is as follows:

A Recorder. Two Sheriffs or Bailiffs. A Coroner. A Steward. Two Chamberlains. Two Wardens. A Town Clerk. A Sword-bearer. A Mace-bearer. Two Sub-Bailiffs. A Crier. One High Constable. And an indefinite body of ordinary Constables.

(*n*) Commonly for repairing the walls round the borough and similar purposes. For example, Letters Patent of 13 Ed. I., gave authority to the . . . of . . . to tax vendible commodities, for the space of three years, towards paving the town.

(*o*) Population or size of a town was no criterion even on grants of original charters; many villages had municipal corpsns., while populous and important towns such as Manchester or Sheffield had no charter down to the eighteenth century.

(*p*) This was largely due to (i.) the inadequate definition in the older charters of the body to whom the privileges were granted, (ii.) the multiplicity of charters whereby the Governing Charter became difficult to identify, and (iii.) the liberal interpretation once given by the courts to the powers of a corpn. See, for example, *R. v. Ashwell* (1810), 12 East, 22; 13 Digest 338, 770, where a bye-law of the corpn. of Nottingham that aldermen should only be elected by the governing body (contrary to the charter) was held reasonable. Later the courts took the contrary view and construed the charter strictly (see cases cited at Report of Royal Commission of 1833, Vol. I., pp. 322 and 657). In Monmouth the corpn. went so far as frequently to alter the qualification for new burgesses.

influence was strong for the purpose of obtaining a dependable majority in the House of Commons by, for example, Edward IV. (*g*) and Elizabeth and later occupants of the Throne; (4) the attacks made on municipal corpsns. during the reigns of Charles II. and James II. (*r*), when many charters were declared forfeited or were surrendered, and the consequent confusion caused through doubts as to the legal validity of the rescissions and the surrenders, and of later charters granted in substitution; and (5) the regrettable fact that the governing body within the incorporated body undoubtedly became not only inefficient but corrupt (*s*).

These and other circumstances led to the outcry against municipal corpsns. which culminated in the appointment of the Royal Commission in July, 1833 (*t*), and subsequently to the Municipal Corpsns. Act, 1835, by which those corpsns. were for the first time regulated by statute (*u*). The provisions of the statute are outside the scope of this title and are now only of historical importance as they were repealed and re-enacted with amendments in the Municipal Corpsns. Act, 1882. [343]

To complete the picture of the processes leading to the settlement of all questions of what areas are now classed as municipal boroughs, the Municipal Corpsns. Act, 1883 (*a*), must be mentioned. Of the 246 boroughs reported on in 1855, the Municipal Corpsns. Act, 1835, regulated only 178; the remainder, with any areas claiming to be boroughs but not included in the Report, remained unreformed. In 1876 a further Royal Commission was appointed to inquire into municipal corpsns. not subject to the Act of 1835. Their recommendations were carried out by the Municipal Corpsns. Act, 1883 (*a*), which provided that the places mentioned in the Schedules to the Act should (subject to certain savings for particular places) cease to be corporate towns or boroughs and dissolved any municipal or other corpn. there existing, whether under charter or prescription, unless a new charter were granted by the Crown (*b*) applying the provisions of the Municipal Corpsns. Act, 1882 (*c*). And now the municipal boroughs consist of those expressly named in Part II. (*d*) and Part III. (*e*) of the First Schedule to the L.G.A., 1933 (*f*), with the addition of any new boroughs constituted after the passing of the Act (*g*). [344]

(*g*) It is believed that every charter granted since Ed. IV.'s reign included the privilege of parliamentary representation, down to the time when parliamentary representation was first regulated by statute.

(*r*) The history of the proceedings in which the charters and liberties of the City of London were, in 1683, declared by the courts to be forfeited, is merely one illustration of the inroads made or attempted to be made at this period on the independence of the corpsns. It is to be noted, too, that from about this period charters became more detailed in their provisions for the constitution of the corpn.; the reason, of course, was the desirability of obtaining and ensuring control of the corporate body.

(*s*) The Report of the Commission of 1833 reveal many cases of large percentages of revenue being expended on items described as "entertainments, liquors and wines" and the like. Rarely were proper accounts kept, and it appears to have been common for individual members to receive money on behalf of the corporate body without accounting for it.

(*t*) See the terms of reference of the Royal Commission, *ante*, Vol. I., p. 412, note (*c*).

(*u*) Statutes relating to particular corpsns. had been enacted long prior to 1835, but the Act of that year was the first Act to apply generally to all municipal corpsns.

(*a*) 10 Statutes 673.

(*b*) Municipal Corpsns. Act, 1883, s. 3; 10 Statutes 674.

(*c*) 10 Statutes 576.

(*d*) Consisting of county boroughs.

(*e*) Consisting of non-county boroughs.

(*f*) See 26 Statutes 470.

(*g*) November 17, 1933.

POWER TO CONSTITUTE A MUNICIPAL CORPN.

A municipal corpn. is created by the Crown under its inherent common law prerogative, the legal document exemplifying the exercise of the prerogative being a Royal Charter. No town or district is entitled to claim a grant of incorporation as of right. This prerogative has long been recognised by statute, the latest recognition being in the L.G.A., 1933 (*h*). In only one case has a municipal corpn. been created by statute (*hh*), but statutory provisions have affected, and indeed altered and annulled, provisions contained in charters (*i*), and, in effect, the area of jurisdiction of the corporate body is extended on every extension of the boundaries of a borough, although no amending or extending charter is ever petitioned for (*k*). [345]

By sect. 129 of the L.G.A., 1933 (*h*), on the grant of a charter the Crown may extend to the borough thereby created and the inhabitants thereby incorporated, the provisions of that Act relating to boroughs.

Every modern charter includes provisions to the following effect (more detailed provisions are considered later) :

- " 1. The area comprised within the limits described in the Schedule to these presents is hereby created a municipal borough by the name of the 'Borough of ———'.
- " 2. The inhabitants of the said area comprised within the said limits and their successors shall be and are hereby declared to be one body politic and corporate by the name of 'The Mayor Aldermen and Burgesses of the Borough of ———' with perpetual succession and a Common Seal. . . .
- " 3. The Mayor, Aldermen and Burgesses of the said Borough shall have the powers, etc., usually vested by law in the Mayor, Aldermen and Burgesses of a Municipal Borough and the provisions of the L.G.A., 1933 (*l*), relating to boroughs shall extend to the said Borough and the inhabitants thereof incorporated by this Charter."

The grant of a charter is always made on the advice of the Privy Council (*m*), and sect. 129 of the L.G.A., 1933, strictly construed, only

(*h*) S. 129 ; 26 Statutes, 374. Previous similar provisions were contained in Municipal Corpn. Act, 1835, s. 141, and Municipal Corpn. Act, 1882, s. 210 (10 Statutes 643).

(*hh*) It is stated in Clifford's History of Private Bill Legislation, Vol. 2, p. 208, that in 1439 Plymouth was incorporated by Statute. The Plymouth Corpn. Act, 1915, clearly recognises the document of 18 Henry V. as an Act, and sets it out in the Schedule of enactments not repealed.

(*i*) See Municipal Corpn. Act, 1883 (10 Statutes 673 *et seq.*), and compare the preamble and s. 1 of Municipal Corpn. Act, 1835, which provides "Whereas . . . it is expedient that the charters whereby the said bodies corporate are constituted should be altered in the manner hereinafter mentioned : Be it therefore enacted, that so much of all . . . royal and other charters, grants, and letters patent now in force relating to the several boroughs named in the Schedules A and B to this Act annexed, or to the inhabitants thereof . . . as are inconsistent with or contrary to the provisions of this Act, shall be and the same are hereby repealed and annulled."

(*k*) The usual operative section in an Extension Act or Order reads : "The boundary of the existing borough of . . . shall be altered so as to include therein the parishes of . . . and the existing borough as so altered shall for the purposes of the Municipal Corpn. Acts and for all other purposes be the borough of . . ." Presumably the Royal Assent to the Act would be a sufficient signification of the assent of the Crown to the extension of the charter to the added areas, if any such question arose.

(*l*) The wording has been amended to indicate the form which a charter granted under the L.G.A., 1933, would take.

(*m*) S. 130 of the L.G.A., 1933 (26 Statutes 375), provides for the petition (see *infra*) being referred to the Privy Council.

enables the provisions of that Act relating to boroughs to be extended to the new borough, by the advice of the Privy Council. The usual form of the grant in a charter, after reciting that the Privy Council have recommended the grant, runs: "We Therefore as well by virtue of Our Royal Prerogative as in pursuance of and in accordance with the L.G.A., 1933, or any other Act or Acts and of all powers and authorities enabling Us in this behalf and with the advice of Our Privy Council do hereby grant order and declare as follows. . . ." [346]

The persons incorporated are the "inhabitants" (*n*); the council of the borough is not itself incorporated, though by statute they are empowered to act for, and bound to exercise the functions of, the municipal corpn. (*o*). Consequently in formal acts the name of the municipal corpn. must be used and not that of the council (*p*). In the case of all other local government areas any council acting for the area is itself incorporated, not the inhabitants, and the incorporation is effected by statute and not by charter (*q*). [347]

PROCEDURE ON APPLICATION FOR A CHARTER

General Outline.—The procedure on application for a charter of incorporation has, in so far as the proceedings relating to the settlement of the scheme (*r*) which is essential on the formation of a new borough, been modernised by the L.G.A., 1933. Two distinct codes must be observed although in practice they are worked concurrently; first, the procedure of the Privy Council Office in relation to the grant of a charter, and second, the statutory requirements relating to the preparation, settlement and confirmation of the scheme consequent on the grant of the charter, which deals with the powers and property of the public bodies existing within the area.

The details under each head will be dealt with later, but first it is desirable to obtain a general idea of the various stages in the procedure. These consist of the following steps (where alterations in procedure have been effected by the L.G.A., 1933, the old procedure is indicated in the footnotes):

(*n*) The whole of the inhabitants, seemingly, are incorporated; cf. the term "inhabitant householders" in Municipal Corpn. Act, 1882, s. 210 (10 Statutes 643), since repealed, who before the L.G.A., 1933, came into operation, were to sign the petition for incorporation. It was held in *R. v. Mashiter* (1837), 6 A. & E. 153; 13 Digest 294, 252, and *R. v. Davie* (1837), 6 A. & E. 374; 13 Digest 309, 414, that the term "inhabitants" in a charter has no definite legal meaning in itself, but must in each case be explained by extrinsic evidence, e.g. usage or reference to the content or objects of the charter. The point is of academic importance now, since the council in a borough exercises all the functions of the corpn.

(*o*) L.G.A., 1933, s. 17 (1), (2); 26 Statutes 313. The municipal corpn. is defined as the body corporate constituted by the incorporation of the inhabitants of a borough (*ibid.*, s. 305).

(*p*) In many modern statutes powers are given to the council of a borough as such, and by s. 15 (1) of the Interpretation Act, 1889 (18 Statutes 998), any reference in an Act to the powers, duties, liabilities or property of the council of a borough is to be construed as a reference to the powers, etc., of the mayor, aldermen and burgesses of the borough acting by the council.

(*q*) It may be mentioned here that in a memorandum submitted by the Minister of Health to the Royal Commission on Local Government appointed in 1923, it was suggested that the system of creation of boroughs by charter might be discontinued and a system of statutory boroughs substituted. The reasons given for the suggestion, the arguments advanced for and against by the Associations of the various local authorities and the conclusions of the Commission will be found on pp. 78–86 of the Final Report in 1929 (Cmd. 3436).

(*r*) See *post*, pp. 140 *et seq.*

1. Preliminary correspondence with the Privy Council Office to ascertain whether the application is one which is likely to be entertained or refused (*s*).
2. A petition is presented to the Crown by the council of the urban or rural district applying for a charter, after certain resolutions have been passed (*t*). It will be seen that a parish council are not allowed to present a petition.
3. Upon presentation, notice of this petition must be given by petitioners to the Minister of Health and to the county council within whose area the district is situate (*a*).
4. The petition stands referred to a committee of the Privy Council, referred to in the Act as the Committee of Council (*b*).
5. The first matter considered is whether a *prima facie* case is made out (*c*), and if satisfied on that point, the committee will take the petition into consideration, but before doing so :
 - (i.) notice must be given of the petition and of the time when it will be taken into consideration (*d*) ;
 - (ii.) the committee may request the Minister of Health to hold a local inquiry (*e*) ; and on consideration of the petition the committee must consider with the petition any representations made by the Minister of Health or the county council (*f*).
6. If, as a result of their consideration of the petition, the various representations made with respect to it, and the report of the

(*s*) This is, of course, a matter of expediency. Obviously a district council would not wish to run the risk of the petition being refused point blank. No detailed investigation would be made at this stage by the Privy Council Office, but it is understood that a preliminary communication has frequently led to no further step being taken by the promoters.

(*t*) L.G.A., 1933, s. 129 (2). As to the petition and the resolutions, see *post*, p. 135. Prior to the L.G.A., 1933, the petition was that of "the inhabitant householders of any town or towns or district in England, or of any of those inhabitants" (see Municipal Corpn. Act, 1882, s. 210 (10 Statutes 643), now repealed by L.G.A., 1933, 11th Schedule, Part II.; 26 Statutes 518).

(*a*) L.G.A., 1933, s. 130 (2); 26 Statutes 375. A similar provision in L.G.A., 1888, s. 56 (10 Statutes 732), is repealed by L.G.A., 1933, 11th Schedule, Part III.

(*b*) L.G.A., 1933, s. 130 (1). A similar provision in Municipal Corpn. Act, 1882, s. 211 (1) (10 Statutes 643), is repealed by L.G.A., 1933, 11th Schedule, Part II. The reference to the Committee of Council is automatic, by virtue of the statutory provision (*ibid.*). It is understood that the Committee of Council usually consists of the Lord President of the Council and the Minister of Health.

(*c*) This is understood to be the practice; it is not a statutory provision.

(*d*) L.G.A., 1933, s. 130 (3); 26 Statutes 375, re-enacting Municipal Corpn. Act, 1882, s. 211 (2), which is repealed by L.G.A., 1933, 11th Schedule, Part II. The notice must be published in the *London Gazette* "and otherwise in such manner as the committee think fit for the purpose of making it known to all persons interested" (*ibid.*).

(*e*) L.G.A., 1933, s. 130 (2); 26 Statutes 375. In practice, an inquiry is always held. Before 1930, the inquiry was held by a Commissioner appointed by the Privy Council, usually a barrister. The alteration was recommended by the Royal Commission on Local Government in the Final Report issued in 1929 (Cmd. 3486), see p. 86. As to the local inquiry, see *post*, p. 139.

(*f*) L.G.A., 1933, s. 130 (4), re-enacting the similar provision in L.G.A., 1888, s. 56 (10 Statutes 732), which is repealed by L.G.A., 1933, 11th Schedule, Part III. It will be noticed that the committee are not bound to accede to the representation; and in one or two instances a charter has been granted on the advice of the Privy Council although the Local Government Board were against incorporation. The Royal Commission in their Final Report referred to in the preceding note, also at p. 86, recommended, "In determining what advice should be tendered to Your Majesty in regard to the exercise of the prerogative in the grant of a Charter the Committee of the Privy Council should have regard primarily to the Report of the Minister of Health . . ."

inspector by whom the local inquiry was held, the committee decide to recommend the grant of a charter, they instruct the petitioners to submit to them a draft charter and a draft scheme (g).

7. After submission of the draft scheme :

(i.) notice of its submission must immediately be given, naming a place within the proposed borough where a copy can be inspected, and stating that representations with respect to it may be made to the committee of council within one month (h).

(ii.) after the expiration of the month, the committee consider any representations received and the suggestions of the Government departments to whom the drafts have been sent for comments (i), and then settle the scheme (k) ;

(iii.) notice of the settled scheme is given similar to that under para. (i.) above (l).

8. After being settled the subsequent proceedings in relation to the scheme vary, as follows, according to whether objection to the scheme as settled is forthcoming or not :

(i.) if no petition against the scheme is presented to the committee within one month after notice of the scheme being settled, or if all petitions presented are withdrawn, the committee may submit the scheme for confirmation either to Parliament or to His Majesty who may confirm it by Order in Council (m) ;

(ii.) if a petition is presented within the month and not withdrawn either by any public body affected by the scheme or by at least one-twentieth of the local government electors of the area (n) to which the scheme relates, the scheme is to be treated as opposed and requires confirmation by a Bill in Parliament (o).

9. The charter in the revised form is now sent by the committee of council to the Lord Chancellor and on receiving his approval is submitted with the settled scheme, if unopposed, to the

(g) See *post*, p. 139, as to the draft charter, p. 140, as to the draft scheme. It will be noticed that paras. 7 and 8 of the text relate only to the scheme ; when drafts are asked for it means that the committee have decided in favour of the grant of a charter and no further opportunity of objecting to the application in principle is available. Thereafter objections are limited to the scheme which will prescribe the detailed machinery governing the new authority. The statement in the text in relation to the draft charter gives the practice of the Privy Council Office ; the statement in relation to the draft scheme is the effect of L.G.A., 1933, s. 132 (1) ; 26 Statutes 376.

(h) *Ibid.*, s. 132 (2). Prior to the L.G.A., 1933, this notice and the notice under para. 7 (iii.) of the text used to contain a full print of the draft and settled scheme respectively (see Municipal Corpn. Act, 1882, 7th Schedule, paras. (2) and (4), now repealed by L.G.A., 1933, 11th Schedule, Part II.).

(i) *Ibid.*, s. 133 (1) ; 26 Statutes 377.

(k) *Ibid.*, s. 132 (3).

(l) *Ibid.* ; and see note (h), *supra*.

(m) *Ibid.*, s. 132 (5). In practice it is confirmed by Order in Council, and would only be submitted to Parliament if some very difficult question of policy arose.

(n) In the case of an application covering a whole district and a decision to advise the grant of a charter for part only of the district, the " area " would, it is thought, be the part forming the borough and not the whole district.

(o) L.G.A., 1933, s. 132 (4). As to the definition of " public body," see *post*, p. 141, and as to the procedure when confirmation by Parliament is necessary, see *post*, p. 142. Cases of opposition to a settled scheme are very rare.

King in Council for final approval. The scheme is approved by Order in Council and His Majesty issues his Royal warrant to the Lord Chancellor for the charter to be passed under the Great Seal of England (*p*). [348]

The Petition.—The council of any urban or rural district may present a petition to His Majesty praying for the grant of a charter of incorporation (*q*). As already suggested, a preliminary inquiry should be made to verify that the application is one which is likely to be successful (*r*), and if this inquiry is satisfactory, the council should pass resolutions as follows before presenting the petition :

1. A resolution that a petition for a charter of incorporation be presented (*s*). The meeting of the council must be a special meeting summoned for that particular purpose and the resolution must be passed by a majority of the whole number of the members of the council (*s*). The meeting is summoned in the ordinary way, but must be called for the particular purpose of considering whether a petition shall be presented. A majority merely of those present and voting will not necessarily suffice : at least one more than one-half of the total number of members must vote in favour. It is therefore essential as a matter of practice, that the number of votes, for and against, should be taken and recorded in the minutes. It is desirable that the actual form of the petition should be submitted to the council for approval ; there is no legal objection, however, to the drafting of the petition being left to a committee, if thought fit ; and, in any event, it would be wise to authorise a small committee to act on behalf of the council during the subsequent proceedings on the petition, as questions requiring quick decisions may readily arise (*t*).

(*p*) The scheme is sent direct to the petitioners with one copy of the certified map, the duplicate map being retained in the Privy Council Office. The charter is forwarded to the Home Secretary who informs the petitioners that it may be taken up on payment of the customary fees.

(*q*) L.G.A., 1933, s. 129 (1) ; 26 Statutes 374. The section does not expressly empower the council to petition, but implies that a right exists. Consequently it is thought that the difficulty previously experienced in regard to the costs of an abortive application for a charter (when it was the rule that these costs could not be paid out of the local rate) will no longer arise, and the applicant council will be able to defray costs from the local rate. As to costs of opponents, see as to local inquiry, *post*, p. 139, and as to proceedings on the scheme, *post*, p. 141.

(*r*) See *ante*, p. 133.

(*s*) L.G.A., 1933, s. 129 (2) ; 26 Statutes 375.

(*t*) The following resolutions, which can be adapted to suit the particular circumstances, may be used (the summons would call the meeting "for the purpose of considering, and, if thought fit, adopting and passing the following resolutions") :

"1. That the council present a petition to His Majesty praying for the grant of a Charter of Incorporation creating the . . . District of . . . a municipal borough, and extending to such borough and the inhabitants thereof all the provisions of the L.G.A., 1933, relating to boroughs. 2. That the form of Petition printed in the Schedule be approved and the Common Seal be affixed thereto, and that, thereafter, the same be presented to His Majesty. 3. That the . . . Committee (or the following persons) be authorised to take all necessary steps in the name and on behalf of the council, including the representation of the council at any inquiry which may be held with power to draft and submit and approve amendments of a draft charter and draft scheme, for carrying the foregoing resolutions into effect." If the resolutions are passed the minutes of the meetings may be : "It was moved by . . . , seconded by . . . , and resolved (. . . members voting in favour of the resolutions, . . . against, and . . . not voting) as follows : [Then set out the resolutions as above.]"

Local Inquiry and Preparation Therefor.—After the petition has been presented and notice thereof given to the Minister of Health and the county council (*i*), the petitioning council must prepare for the local inquiry which will be held by an inspector of the Ministry (*k*). The preparations for the inquiry involve considerations of the greatest importance, including the settlement of the number of the proposed council and of the number and boundaries of the wards of the proposed borough, and great care must be taken to have the whole case thoroughly prepared. The objects of the petitioners at the inquiry are twofold: First to put forward the best possible reasons in support of the application, and second, to present a clear programme of the administrative arrangements if a charter is granted (*e.g.* number of council members, wards, transfer of functions and property from other public bodies and the like) (*l*).

The evidence given in general support of a petition is usually directed to show the following, and, conversely, opponents, if there are any (*m*), will endeavour to establish the contrary:

1. That the area, population and rateable value of the district and its general characteristics (*n*) render it suitable for constitution as a municipal borough.
2. A record of good and progressive administration in local government matters, particularly in regard to matters relating to public health and sanitation, and the past provision of all necessary services (*o*).
3. That there is a definite desire for incorporation and that the area can be efficiently governed and is of adequate financial capacity (*p*).

In addition to these general considerations, the inspector will usually be instructed to inquire—

4. Whether, in the event of a charter being granted, the precise area mentioned in the petition should be adopted as the borough (*q*), whether the borough should be divided into

the petition and the total rateable value of the signatories. As the petition no longer emanates from the householders but from the district council, it is anticipated that the summary will no longer be required.

(*i*) See *ante*, p. 133.

(*k*) L.G.A., 1933, s. 130 (2); 26 Statutes 375. The statute does not require a local inquiry to be held, but, in all cases where a *prima facie* case has been made out, it is the invariable practice to do so.

(*l*) The first object mentioned in the text will nearly always be evidence in support and amplification of the statements made in the petition; the second comprises the matters which will (except as to number of council and wards) be dealt with in the scheme, see *post*, p. 139.

(*m*) Opposition to incorporation is not usual, but the inquiry is none the less searching for all that.

(*n*) Such as the history of its development, and the existence of a communal life and spirit, and generally what, for want of a better description, may be called "civic responsibility."

(*o*) It will be seen that the general arguments are similar to those which are usually put forward in favour of an enlargement of area, except such of the latter (*e.g.* outgrowth) as are obviously inapplicable.

(*p*) See also note (*f*), *ante*, p. 133, as to the recommendation of the Royal Commission on Local Government on what matters should be regarded primarily on consideration by the committee of council of a petition.

(*q*) It is to be noted that the whole of the district of the council by whom the petition is presented need not be incorporated. Thus an R.D.C. could ask that one or more of their parishes should be formed into a borough. On the other hand, the charter may extend to "any adjoining area" (L.G.A., 1933, s. 129 (1)). It is

wards, and, if so, the number and precise boundaries of the wards.

5. For what purposes a scheme under the L.G.A., 1933, will be required (*r*). [349A]

The particular questions with which the petitioning council will have to deal at the inquiry include the following :

(i.) *Number of the Proposed Council*.—In deciding on the number of the proposed council, regard must be had to the question of aldermen and also of the number of wards. The number of aldermen must be one-third of the number of councillors, and thus the aldermen constitute one-quarter of the whole council (*s*). One-half of the aldermen must retire or go out of office on the ordinary day of election (*t*) in every third year (*u*). It is therefore desirable to provide for an even number of aldermen (*a*). Further, the number of councillors for each ward should either be three or a multiple of three, in order that one-third may retire annually (*b*). The only other consideration bearing on the number of members of the proposed council is the number of the wards of the new borough. [350]

(ii.) *Wards of the Proposed Borough*.—In the case of a district already divided into wards, where there are a sufficient number of wards and the representation is fairly equal both in regard to the number of electors and the annual value of the property, it may be best to propose that the existing wards should form the wards of the new borough. In other cases regard must be had to the two points mentioned in sect. 25 (5) of the L.G.A., 1933 (*c*), whereby on a petition for the alteration of wards or division of a borough into wards, the commissioner appointed by the Secretary of State (*d*) is required to have regard as far as possible to (1) the number of electors in each ward, and (2) the net annual value of the land in the ward at the preceding March 31 (*e*). The petitioners should endeavour to formulate their

not clear from the Act that the council of the district of which the adjoining area forms part must petition before that area can be included in the borough ; the practice before 1933 was to require a further petition (see answers of Sir Almeric Fitzroy in Part II., p. 213, of Minutes of Evidence taken by the Royal Commission on Local Government). In general, a new borough consists of a single urban district, but the borough of Lytham St. Anne's, formed in 1922, comprised two urban districts. No doubt, in such a case, petitions should be presented by both urban district councils asking that their districts should be incorporated as one borough.

(*r*) As to the scheme, see *post*, p. 140. In practice a scheme is always necessary although L.G.A., 1933, s. 132 (1) ; 26 Statutes 376, is drawn in permissive form.

(*s*) *Ibid.*, s. 21 (2) ; *ibid.*, 316. The charter itself provides for determining which of the aldermen shall go out of office on the expiration of the first three years from the formation of the new borough ; see *post*, p. 140.

(*t*) Usually November 9 ; *ibid.*, 3rd Schedule, Part II., rule 1 (2) ; 26 Statutes 497 ; and see *ibid.*, s. 295 ; *ibid.*, 462, as to that date falling on a Sunday or public holiday.

(*u*) *Ibid.*, s. 23 (2) ; *ibid.*, 316.

(*a*) This is not, however, essential, and there are many cases of boroughs with an uneven number of aldermen, see *ibid.*, s. 21 (4), and the words " or as near as may be," but an even number should be aimed at in the case of a new borough.

(*b*) *Ibid.*, s. 23 (2).

(*c*) See *ibid.*, s. 25.

(*d*) The Secretary of State acts in the case of a petition of an existing borough seeking division into or re-distribution of wards, see *ibid.* ; the inquiry dealt with in the text is of course that on the petition for incorporation.

(*e*) *Ibid.*, sub-s. (5). The definition of net annual value in *ibid.*, s. 305, should be borne in mind : it means generally the annual value for income tax purposes under Schedule A, subject to certain deductions, and only where land is not assessed under Schedule A does it mean the net annual value for rating as shown in the valuation list.

scheme of wards on the same principles, bearing in mind that ordinarily there should be three councillors (*f*) and one alderman for each ward (*g*). Maps of the district showing the division of the area into the proposed wards should be prepared for the purposes of the inquiry. [351]

(iii.) *Statistics relating to the District.*—Carefully prepared tables of statistics relating to the district and of the works and undertakings of the council should be prepared for submission at the inquiry. These should include (1) area, population and rateable value of the district, giving the latest available figures and comparative figures for previous years; (2) details as to the constitution and officers of the council; (3) particulars of any undertaking, *e.g.* gas, water, electricity, transport, housing schemes, sewerage and sewage disposal schemes, baths, cemeteries, etc.; (4) particulars of other institutions of the council, whether provided jointly or by agreement with other authorities, such as hospitals, fire brigades, free libraries, recreation and pleasure grounds, allotments and the like; (5) particulars of local Acts, adoptive provisions, orders and bye-laws; (6) full financial details of the council's activities and funds and of rates, loans, abstract of accounts, etc.; (7) vital statistics over a number of years; and (8) area, population and net annual value of the proposed wards. [352]

Conduct of the Inquiry.—The provisions governing any inquiry directed by the Minister of Health are now contained in the L.G.A., 1933 (*h*). The inspector (*i*) is empowered to summon witnesses (*k*) to give evidence and to produce documents (*l*), and may administer an oath or require a declaration of the truth of the evidence (*m*). Generally any person or body interested is heard, whether in opposition to or support of the petition. The costs of the inquiry, including a sum not exceeding five guineas per day for the services of the inspector, as certified by the Minister, are to be paid by such parties as the Minister may direct, and the costs of any of the parties may be directed to be borne by any of the other parties (*n*). The proceedings generally are less formal than those of the law courts, but any party may, if desired, appear by counsel or solicitor; the petitioners, of course, will first be called on to make their case, and the subsequent order of the proceedings and of the hearing of other parties is in the discretion of the inspector. [353]

Contents of Draft Charter (*o*).—If the committee of council, following the report of the local inquiry, consider that a case for incorporation

(*f*) L.G.A., 1933, s. 25 (5); 26 Statutes 318.

(*g*) See *supra*.

(*h*) S. 290; 26 Statutes 459.

(*i*) The person appointed by the Minister of Health to hold an inquiry is usually one of the Ministry's engineering inspectors, as the efficiency of the existing schemes of sewerage and water supply is often criticised.

(*k*) The expenses of a witness having to travel more than ten miles from his residence should be paid or tendered beforehand (s. 290 (2) (a)).

(*l*) The power does not extend to documents of title to land, other than land of a local authority (s. 290 (2) (b)).

(*m*) Penalties are provided for non-attendance after summons, for refusal to give evidence, and for altering, concealing, etc., any document (s. 290 (3)).

(*n*) S. 290 (4) and (5); and see *ibid.*, as to recovery of costs. Observe that these costs are not the same as the costs referred to in s. 133 (3), which relate to proceedings on the scheme and not on the petition.

(*o*) See the general outline of procedure, *ante*, p. 133, for the proceedings following the conclusion of the inquiry.

has been made out, they will invite the promoters to submit a draft charter of incorporation, and also a draft scheme (*p*). The committee invariably forward a form of charter and convey an intimation as to the number of members of the council and the number and boundaries of the proposed wards of the new borough (*q*). Upon receipt of the intimation, the district council should without delay cause the charter to be drafted, and consider the same, and should also appoint persons for nomination in the charter to perform such duties and make such other temporary modifications of the L.G.A., 1933, as are necessary for making that Act applicable to the first constitution of a municipal borough. These persons include a charter mayor, a deputy charter mayor to act in the case of the death, inability, refusal or default of the charter mayor, and a charter town clerk and a deputy charter town clerk to act in case of the death, inability, refusal or default of the charter town clerk.

Charters of incorporation are almost identical in form (*r*). After reciting the presentation, notice and consideration of the petition and also the recommendation of the committee of council, His Majesty the King, "as well by virtue of his Royal Prerogative as in pursuance of and in accordance with the L.G.A., 1933, or any other Act or Acts, and of all powers and authorities enabling him in that behalf by and with the advice of his Privy Council" (1) creates the borough; (2) incorporates the inhabitants; (3) extends the provisions of the L.G.A., 1933, relating to boroughs, to the new borough (*s*); and provides for (4) the number of councillors; (5) any division of the borough into wards, with the names and boundaries of the wards; and (6) the number of councillors to be elected for each ward.

The charter, also, for the purpose of making applicable the L.G.A., 1933, and for bringing into full existence and activity the new corp'n. and borough, "fixes and orders, directs and declares" the procedure to be adopted with respect to the preparation, publication and compilation of the first list of electors; the holding of the election of councillors; the names of the persons who are to act as town clerk and deputy, mayor and deputy; the date of the first meeting of the council of the borough; the election of the first aldermen; and the dates of the retirement of the mayor, aldermen and councillors.

The draft charter, being prepared, should be submitted to the committee of council with the draft scheme hereinafter mentioned. [354]

Contents and Settlement of Draft Scheme (*t*).—The committee of council may also require the petitioners to submit a draft scheme providing for transfer or adjustment of the whole or any part of the functions, franchises, property (*u*), income, debts, liabilities and

(*p*) As to the draft scheme, see *infra*.

(*q*) By L.G.A., 1933, s. 132 (26 Statutes 376), it is lawful for His Majesty, by the charter, to fix the number of councillors and the number and boundaries of wards, and to make other provisions required for adapting that Act or any other Act to the case of the first constitution of a borough.

(*r*) A form of charter is given in *Encyclopædia of Forms and Precedents*, 2nd ed., Vol. XIII., p. 419.

(*s*) The form of the clauses numbered (1), (2) and (3) in the text is given, *ante*, p. 131.

(*t*) As to when a scheme is to be submitted, see the general outline of the procedure, *ante*, p. 133.

(*u*) Property is defined as including "all property, real and personal, and all estates, interests, easements and rights, whether equitable or legal, in, to, and out of property, real and personal," L.G.A., 1933, s. 305; 26 Statutes 467.

expenses of any public body (a) whose district is comprised wholly or partly within the area proposed to be included in the borough, and also of any officer of that body (b). In practice a scheme will be necessary in every case.

The contents and form of schemes are generally very much the same, though variations must be made to suit the circumstances of each area, as, for example, where there are charitable or other institutions founded under peculiar conditions, or where a burial board's powers are to be transferred, or particularly in cases where the new borough will include part only of a district or the whole of a district with part or parts of another district or districts (c). The draft scheme should include provision for (1) short title; (2) date of operation; (3) continuance of the district council until commencement of scheme and thereupon the dissolution of the district council; (4) vesting in and transfer to the corpn. of the powers, duties, property, etc., of the district council; (5) transfer of contracts, debts, etc., of the district council to the corpn.; (6) transfer of powers under adoptive Acts or orders; (7) application of bye-laws; (8) scheme under Education Act, 1921 (d), and continuance of existing education committee until the new scheme operates; (9) any adjustments, financial or otherwise, with any other authority; (10) transfer and compensation of officers; and (11) audit of accounts of the district council (e).

After submission of the draft scheme, the requisite notices thereof are given (f), any representations made to the committee of council as a result of the notice or by the Government departments to whom the draft is referred (g), are considered and the committee then may settle the scheme, with or without modification, and thereafter give notice of the scheme having been settled (h). [355]

Subsequent Proceedings.—After the draft scheme has been settled by the committee, any further opposition must take the shape of the presentation to the committee of a petition against the scheme under sect. 132 (4) of the Act of 1933 (i). Any such petition must be presented within one month after the publication of the notice that the scheme has been settled, and may be made either by any public body (k) affected by the scheme or by not less than one-twentieth of the local government electors of the area of the proposed borough (l).

(a) See the definition in L.G.A., 1933, s. 305 (26 Statutes 467), of the term "public body." It includes practically every body of persons who may in any way be affected by the formation of the new borough and who perform any of the duties of local administration.

(b) *Ibid.*, s. 132 (1); 26 Statutes 376.

(c) See note (g), *ante*, p. 137, as to inclusion of part of other districts.

(d) S. 4; 7 Statutes 132. But see also the Education (Local Authorities) Act, 1931; 24 Statutes 173, which prevents the council of a new borough becoming a local education authority, if their predecessors were not such an authority.

(e) It would be advisable to obtain from the Privy Council Office copies of some recent schemes.

(f) L.G.A., 1933, s. 132 (2); and see *ante*, p. 134.

(g) *Ibid.*, s. 133 (1).

(h) *Ibid.*, s. 132 (2) and (3). See these requirements specified in more detail in the general outline of procedure, *ante*, p. 133.

(i) The opposition is, in any case, limited to the contents of the scheme and cannot raise any question as to whether the charter should be granted.

(k) See note (a), *supra*.

(l) L.G.A., 1933, s. 132 (4). Petitioners against a scheme must realise that to make any effective opposition at this stage they must be prepared to oppose the scheme by counsel before an Opposed Committee of Parliament; no express provision is made for a further hearing or consideration by the committee of council.

If no petition is presented within the month, or every petition so presented is withdrawn, the committee may submit the scheme for confirmation either to Parliament or to His Majesty in Council, and in the latter case it may be confirmed by Order in Council (*m*); in the event of there being no opposition, the latter course is usually adopted.

If such a petition is presented and not withdrawn, the scheme requires the confirmation of Parliament (*n*), and for that purpose the committee may introduce a Bill for confirmation of the scheme either in the form originally settled or with such alterations as they think proper (*o*). If while the Bill is pending in either House, a petition is presented against the scheme, the petitioners may appear and oppose the Bill before the committee of the House to which it has been referred, as in the case of a private Bill (*p*).

The further stages of the scheme after confirmation, and of the charter, have already been mentioned (*q*). [356]

VALIDITY AND AMENDMENT OF CHARTERS AND SCHEMES

(i.) **Validity.**—A charter creating a borough purporting to be granted in pursuance of the royal prerogative and pursuant to or in accordance with Part VI. of the L.G.A., 1933, is, after acceptance (*r*), to be deemed valid and within the powers of the Act and of His Majesty's prerogative, and may not be questioned in any legal proceeding whatever (*s*).

Similarly the confirmation of a scheme is conclusive evidence that all the requirements of Part VI. of the Act of 1933 have been complied with, and that the scheme has been duly made and is within the powers of the Act (*t*). [357]

(ii.) **Amendment.**—Prior to the L.G.A., 1933, it was doubtful whether a charter could, after acceptance, be amended or varied (*u*), but the Act makes it clear that a petition for amendment can be presented and consequently recognises the right to grant an amending charter (*a*). The procedure will be the same, so far as it is applicable, as that described above in respect of a petition for incorporation.

(*m*) L.G.A., 1933, s. 132 (5); 26 Statutes 377.

(*n*) *Ibid.*, s. 132 (4).

(*o*) *Ibid.*, s. 134. The necessity for submission to Parliament does not frequently arise.

(*p*) *Ibid.* For procedure, see title **BILLS, PARLIAMENTARY AND PRIVATE**. The petitioners in Parliament need not, seemingly, be restricted to persons who have petitioned the committee of council against the scheme.

(*q*) See *ante*, p. 134.

(*r*) Acceptance of a charter is necessary at common law (*Rutter v. Chapman* (1841), 8 M. & W. 1, Ex. Ch.; 13 Digest 233, 18). Acceptance was proved in *R. v. Hughes* (1828), 7 B. & C. 708; 13 Digest 292, 236, by evidence that a majority of persons having the right to signify assent to a new charter to a borough did so either by voting at a public meeting or by written declaration of assent. The election of the new councillors would seem to be sufficient evidence of acceptance. See, further, 8 Halsbury (Hailsham ed.), title "Corporations," at pp. 23 *et seq.*

(*s*) L.G.A., 1933, s. 137 (1). Prior to the statutory provision it was decided that a *quo warranto* would not be granted to try the legality of a charter (*R. v. Jones* (1863), 8 L. T. 503; 13 Digest 421, 1408); nor would the court inquire into the validity of a charter, but would act upon it until proper proceedings were taken to set it aside (*A.-G. v. Avon Corpn.* (1863), 33 Beav. 67; affirmed on appeal, 9 L. T. 187; 13 Digest 278, 87).

(*t*) *Ibid.*, s. 137 (3).

(*u*) See 8 Halsbury (Hailsham ed.), title "Corporations," at p. 121.

(*a*) See s. 130 (1) and the words "and every petition for the amendment under this Part of this Act of a charter of incorporation"; these words did not occur in previous legislation.

A scheme, whether made under the L.G.A., 1933, or under earlier enactments (*b*), may be amended on the petition of the borough council, or of one-twentieth of the electors of the borough or of any public body (*c*) affected by the scheme. Such a petition also stands referred to the committee of council, and the subsequent procedure is the same as in the case of a petition for the grant of a charter creating a new borough (*d*). An unopposed amending scheme may be confirmed by Order in Council even though the original scheme was confirmed by Parliament; an opposed scheme requires confirmation by Parliament (*e*). [358]

CONSEQUENCES OF INCORPORATION

Apart from the general and social effect of the incorporation of a new borough, certain consequences result therefrom, in addition to those already noticed (*f*). Among the more important of these are:

Aldermen.—The corpn. will have aldermen as members of its council, which is the material distinction between its new status as a corpn. and its old one as an urban district. [358A]

Audit.—The accounts, with certain exceptions, will no longer be subject to audit by the district auditors (*g*). The auditors will thereafter be three borough auditors (*h*) unless and until the new borough council decide to adopt the system of professional audit or of district audit (*i*). [359]

Borrowing.—The corpn. will occupy a higher financial standing in the money market than while the area was a district, especially as, under the Trustee Act, 1925 (*ii*), stock issued by a corpn. of a borough having a population of 50,000 is a trustee security. [360]

Common Law Corpn.—The corpn., as well as becoming incorporated for the purposes of the L.G.A., 1933, also becomes a corpn. at common law (*k*). [361]

Commission of the Peace.—The council may, by petition to His Majesty, obtain the grant of a separate commission of the peace (*l*). [362]

County Borough Status.—The area has taken the first step towards the attainment of county borough status, though its attainment has been made more difficult by the statutory prohibition against the promotion of a private Bill for this purpose unless the population is 75,000 or upwards (*m*). [363]

(*b*) *E.g.* under Municipal Corpn. Act, 1882, s. 210; 10 Statutes 643; now repealed by L.G.A., 1933, 11th Schedule, Part II.

(*c*) For definition of "public body," see note (*a*), *ante*, p. 141.

(*d*) L.G.A., 1933, s. 135 (1); 26 Statutes 377.

(*e*) *Ibid.*, sub-s. (2).

(*f*) See *ante*, pp. 127—131.

(*g*) All accounts of district councils, whether urban or rural are subject to district audit; L.G.A., s. 219; 26 Statutes 424.

(*h*) *Ibid.*, s. 237; *ibid.*, 433.

(*i*) *Ibid.*, s. 239; see, further, under titles AUDIT and AUDITORS, *ante*, Vol. I., pp. 495, 518.

(*ii*) 20 Statutes 94.

(*k*) See title COMMON LAW CORPORATIONS.

(*l*) See Municipal Corpn. Act, 1882, s. 156; 10 Statutes 627; and title JUSTICE OF THE PEACE.

(*m*) See L.G.A., 1933, s. 139; 26 Statutes 379, and title COUNTY BOROUGH, CREATION OF.

County Court District.—A borough has a greater claim to be formed a separate county court district, and this is an undoubted advantage to the community considering the expense and loss of time consequent upon journeys to a neighbouring borough to institute and carry on proceedings. [364]

Honorary Freeman.—As a borough, the council may honour persons of distinction or may acknowledge eminent services to the borough by conferring the honorary freedom of the borough (*n*). Although the honorary freedom does not carry with it any tangible rights, yet it is considered the highest honour which any town can confer, and is appreciated as such by the recipients. [365]

Police Force.—If the borough has a population of 20,000 or upwards at the census last published before the petition for incorporation, a separate police force can be established (*o*). [366]

Quarter Sessions.—The council of a borough may, if and when they think fit, petition His Majesty in Council for the grant of a separate court of quarter sessions in and for the borough (*p*), and a recorder for the borough could then be appointed under sect. 163 of the Municipal Corpn. Act, 1882 (*q*). [367]

Stipendiary Magistrate (*r*).—If the council desire the appointment of a stipendiary magistrate, they may petition the Secretary of State, and thereupon His Majesty may make an appointment. The salary would be payable by the council of the borough. [368]

(*n*) L.G.A., 1933, s. 259 (26 Statutes 445), replacing Municipal Corpn. Act, 1882, s. 202; 10 Statutes 641, and the Honorary Freedom of Boroughs Act, 1885; 10 Statutes 685; which are repealed by L.G.A., 1933, 11th Schedule, Parts II. and IV.; and see title FREEDOM OF CITY OR BOROUGH.

(*o*) The limit of population is contained in L.G.A., 1933, s. 136. See *ibid.*, s. 296, as to meaning of "the last published census." As to separate police force, see title BOROUGH POLICE. The provision for a separate force does not, of course, apply in the metropolitan police district.

(*p*) Municipal Corpn. Act, 1882, s. 162; 10 Statutes 629. See also title QUARTER SESSIONS BOROUGH.

(*q*) 10 Statutes 629. See also title RECORDER.

(*r*) Municipal Corpn. Act, 1882, s. 161; 10 Statutes 628. See, further, under title STIPENDIARY MAGISTRATES.

CHEESE

See BUTTER, MARGARINE AND CHEESE.

CHICKEN POX

See INFECTIOUS DISEASES.

CHIEF CONSTABLE

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See also titles :

BOROUGH POLICE ;
 COMMISSIONER OF POLICE ;
 COUNTY POLICE ;
 DUTIES AND POWERS OF OFFICERS ;
 METROPOLITAN POLICE ;
 *POLICE ;

POLICE, CITY OF LONDON ;
 POLICE PENSIONS ;
 SPECIAL CONSTABLES ;
 STANDING JOINT COMMITTEE ;
 WATCH COMMITTEE.

* For general account of all forms of police powers and forces including those semi-obsolete.

1. Introductory.—The position of chief constable is one of considerable importance, as the holder of the office, in addition to being responsible for the peace and order of the police district and the direction of the local police, occupies a prominent position in his district, and is to some extent a link with the central government through his connection with the H.O. as well as being one of the principal officials in the system of local government of his area.

There are 58 county police forces, namely, 46 in England and 12 in Wales. Strictly there are 60 county police forces, but the three county forces of Lincolnshire (Holland, Lindsey and Kesteven) are under one chief constable and though historically separate, may be treated as one force. Also the following pairs of forces have the same person as their chief constable—Cumberland and Westmorland ; Huntingdonshire and the Isle of Ely ; the county of the Soke of Peterborough and Peterborough (city) ; and Herefordshire and Hereford (city). Accordingly there are now 56 county chief constables in England and Wales.

There are 121 borough police forces, namely, 116 in England and 5 in Wales. Each has its chief constable, but the chief constables of Hereford and Peterborough are also, as noted above, county chief constables.

The rank of chief constable exists in the Metropolitan Police Force, but it is an intermediate rank, between the ranks of deputy assistant commissioner and superintendent.

The title of head constable has also been used for the chief officer of police of a borough. See title **BOROUGH POLICE**.

The term “chief officer of police” is now used in statutes, orders and regulations, to mean the head of a police force in any police area which has a separate police force, and such a chief officer of a county or borough police force is designated its chief constable. [369]

2. Office of Chief Constable.—The position of chief constable was established by the County Police Act, 1839 (*a*), which allowed the justices in quarter sessions to appoint a chief constable of the county

(sect. 4), who, under sect. 6 of the Act, was to have the general disposition and government of all the constables appointed for the county, subject to the directions of the justices in quarter sessions (now the standing joint committee of the county), and who was to be sworn as a constable (sect. 8).

The office of chief constable of a county has therefore been specifically established by statute.

Although the Municipal Corporations Act, 1835 (*b*), directed the formation of borough police forces, it did not mention the rank of the officer in command and merely refers to the "borough constables."

The "head" or other constable of a borough is mentioned in sect. 9 of the County and Borough Police Act, 1856 (*c*), and in the County and Borough Police Act, 1859 (*d*), reference is made to the chief or head constable of a borough police force (sect. 9, etc.) and to the head constable of the borough (sect. 19).

The Police Act, 1890 (*e*), refers throughout to the "chief officer of police" who is declared to be in a county the chief constable and in a borough the chief or head constable (Third Schedule).

The Police Regulations, 1920 (*f*), directed that the rank in a police force should be designated "chief constable" except where the title "head constable" is used (as was the case in Liverpool until recently).

Finally the Police Pensions Act, 1921 (*g*), defined the term "chief officer of police" of a county and of a borough police area to mean the chief constable (sect. 30 and Third Schedule).

A chief constable is a member of his police force (Police Pensions Act, 1921, s. 24 (*h*), and Police Regulation 1), and by virtue of his declaration of office he possesses all powers, duties and privileges of a constable.

He makes the usual declaration of office (County Police Act, 1839, s. 8 (*i*), and Municipal Corporations Act, 1882, s. 191 (2) (*k*), as modified by the Promissory Oaths Act, 1868, s. 12 (*l*)) before a justice of the county or borough as the case may be. He is the "chief officer of police" of his force, and the provisions of the Police Pensions Act, 1921 (*g*), apply to him as nearly as circumstances admit in like manner as they apply to any other member of the force, except that the certificate of his approved service and the sanction for his removal to another force are to be given by the police authority (Police Pensions Act, 1921, s. 24 (*m*), and Police Regulation 52).

In a county police force, the chief constable must, subject to the approval of the police authority, appoint one of the superintendents to act as his deputy in case of his being incapable from illness or necessary absence from the county to perform the duties of chief constable of the county, and the deputy chief constable so appointed has in such case, and also in case of any vacancy of the office of chief constable by death or otherwise, all the powers, privileges and duties of the chief constable, but is incapable of continuing to act during any vacancy of the office for more than three months after the vacancy has been occasioned (County Police Act, 1839, s. 7) (*n*).

(b) Now repealed.

(d) *Ibid.*, 820. The sections referred to have been repealed.

(e) *Ibid.*, 850.

(g) 12 Statutes 873.

(i) *Ibid.*, 777.

(l) 8 Statutes 383.

(n) *Ibid.*, 777.

(c) 12 Statutes 814.

(f) S.R. & O., 1920, No. 1484.

(h) *Ibid.*, 885.

(k) 10 Statutes 636.

(m) 12 Statutes 885.

The practice of similarly appointing a superintendent in a borough force as deputy chief constable was confirmed by Police Regulation 3 which declares that an officer in a borough police force duly appointed by the Watch Committee to act as deputy chief constable, shall in the absence or incapacity of the chief constable or during any vacancy in that rank, have all the powers and duties of the chief constable not specifically excluded by resolution of the Watch Committee.

However, in any police force the rank of assistant chief constable may be adopted, if the approval of the Secretary of State is given (Police Regulation 2).

The designation of assistant chief constable applies to an officer who acts exclusively as general assistant to the chief constable and has not the charge of a division or of some particular branch of police duty or the duty of chief clerk. In the absence or incapacity of the chief constable or during any vacancy he has all the powers and duties of the chief constable. If such an officer is appointed in a county police force, he is to be regarded as the officer appointed deputy chief constable for the purposes of sect. 7 of the County Police Act, 1839 (Police Regulation 3).

A chief constable is responsible to his police authority for the administration of his force, for the efficiency of which the police authority is responsible. Under sect. 15 of the County and Borough Police Act, 1856 (*o*), His Majesty's Inspectors of Constabulary visit and inquire into the state and efficiency of the police. He is also responsible as regards the peace of his police district, to the justices, who are conservators of the peace.

He is also responsible to the H.O. as he should follow the advice and instructions of the Home Secretary, satisfy H.M. Inspectors of Constabulary as to the administration of the force, and observe the provisions of the Police Regulations, but his position, as regards the authorities to whom he is responsible, is not clearly outlined by law or regulation.

A chief constable should work in close conjunction with his police authority. As a rule he will have the support of the justices, who are usually well represented on the standing joint committee or watch committee, and the supervision of the Secretary of State assists in maintaining necessary uniformity and co-operation throughout the police service.

In theory, the chief constable's position appears complicated, but in practice difficulties due to the indefiniteness of the position rarely arise. [370]

3. Qualifications for a Chief Constable.—Under the County Police Act, 1839, ss. 3 and 4 (*p*), a county chief constable should be a person duly qualified under the rules made by the Secretary of State under the Act, but these rules were revoked as from October 1, 1920, and replaced by the Police Regulations, 1920 (*q*).

The qualifications prescribed for any candidate for a police force by Police Regulations 7 and 8 apply in the case of a candidate for the position of chief constable.

He must produce satisfactory references as to character, including satisfactory proof of good conduct if he has previously served in H.M. Forces, the Civil Service or the Police.

(*o*) 12 Statutes 815.

(*p*) *Ibid.*, 776.

(*q*) S.R. & O., 1920, No. 1484 (reprinted with amendments down to April 25, 1933).

He must be under forty years of age, but this condition will not apply if he has had previous service in a police force or is otherwise entitled to reckon previous service as approved service (see Police Pensions Act, 1921, ss. 7 to 11) (r) for purposes of pension, or in other special circumstances approved by the Secretary of State upon the recommendation of the police authority.

He must, unless a departure is approved by the Secretary of State, be not less in height than 5 ft. 8 in. (or any height limit prescribed by the police authority).

He must be certified by the medical officer of the force to be in good health, of sound constitution and fitted both mentally and physically to perform the duties of his office.

He is not eligible if he holds any other office or employment or carries on any business for gain, or if he or his wife or any member of his family holds or has any pecuniary interest in any licence granted under the laws as to liquor licences or places of public entertainment in the police district to which he seeks appointment.

In addition to the above statutory qualifications, the police authority in any advertisement that they may publish inviting applications, may prescribe other qualifications. [371]

4. Appointment of a Chief Constable.—The chief constable is appointed by the police authority of the force. A county chief constable is appointed by the Standing Joint Committee of the county (County Police Act, 1839, s. 4, as amended by the L.G.A., 1888, ss. 9 and 30) (s), and a borough chief constable is appointed by the Watch Committee of the borough (Municipal Corporations Act, 1882, s. 191) (t).

Every appointment to the post of chief constable of any county or borough police force is subject to the approval of the Secretary of State, and no person without previous police experience shall be appointed to any such post unless he possesses some exceptional qualification or experience which specially fits him for the post or there is no individual from the police service who is considered sufficiently well qualified (Police Regulation 9).

When a vacancy is to be filled and the police authority do not propose to fill it by promoting a member of their own force, the usual practice is to advertise the vacancy in the press and invite applications.

Applicants are required to give particulars regarding themselves, to state their qualifications for the post and to submit testimonials.

In some cases a printed form is provided, setting out the information to be supplied thereon by the applicant.

Candidates may be asked to supply a number of copies of their applications and testimonials for the individual information of the members of the appointing committee. The applications are considered by the police authority and a selection or short list of the more suitable applicants is made.

These selected candidates are invited to attend before the committee, and the final selection is usually made after these personal interviews.

Particulars respecting the selected candidate are then submitted to the H.O. for the Secretary of State's approval. His approval is not given as a matter of course. It has been refused in some cases, as the

(r) 12 Statutes 876—879.
(t) 10 Statutes 636.

(s) *Ibid.*, 776 ; 10 Statutes 692, 708.

selected candidate must possess the qualifications required by Police Regulations 7, 8 and 9. [372]

5. Chief Constable of a County.—As stated above, the chief constable of a county occupies a statutory position, and he is in charge of and responsible for the direction of his police force. He appoints, promotes and dismisses the members of the county force subject to the provisions of the Police Regulations, and he has the general government of the force subject to the authority of the Standing Joint Committee. See "Office of Chief Constable."

He may hold his office until dismissed by the police authority of the county (County Police Act, 1839, s. 4) (*u*).

Having regard to the Police Regulations, 1920, and to the fact that he is a member of the police service, it would appear that any disciplinary proceedings against him should be in accordance with the Police Regulations and should necessarily be taken by the Standing Joint Committee who are responsible for the police of the county. See "Retirement, etc. of a Chief Constable."

Under sect. 4 of the County Police Act, 1839 (*u*), the chief constable of a county has the general disposition and government of all the constables of the force, subject to :

- (1) Such lawful orders as he may receive from the police authority (L.G.A., 1888, s. 9 (1)) (*a*), that is the Standing Joint Committee of the county.
- (2) Such lawful orders as he may receive from the justices (L.G.A., 1888, s. 9 (3)) (*b*), as conservators of the peace.
- (3) Such requirements as to the performance of additional duties connected with the police as the Standing Joint Committee, quarter sessions, or the county council may direct (L.G.A., 1888, s. 9 (2)) (*c*). That is to say the county police may be required to perform extra duties connected with police work, subject to the directions as to such duties in Police Regulation 73.
- (4) The rules established for the government of the force, which are now contained in the Police Regulations, 1920 (*d*), made under the Police Act, 1919, s. 4, for the government, conditions of service, etc., of the police.

By sect. 6 of the County Police Act, 1839 (*e*), the chief constable of a county, subject, it seems, to the approval of the Standing Joint Committee (*f*), appoints the other constables for the county and at his pleasure may dismiss all or any of them ; and he is empowered by the County and Borough Police Act, 1859, s. 26 (*g*), to suspend any constable in his jurisdiction whom he thinks remiss or negligent in the discharge of his duty or otherwise unfit for the same, and may fine him and reduce him from a superior to an inferior rank. In 1920 the Police Regulations confirmed his disciplinary powers and laid down the procedure to be observed in disciplinary cases, including cases of dismissal.

The chief constable of a county force is therefore the sole disciplinary authority subject to the right of appeal to the Secretary of State in the

(*u*) 12 Statutes 776.

(*b*) *Ibid.*

(*d*) S.R. & O., 1920, No. 1484.

(*f*) See L.G.A., 1888, s. 9 (1) ; 10 Statutes 692.

(*g*) 12 Statutes 822.

(*a*) 10 Statutes 692.

(*c*) *Ibid.*

(*e*) 12 Statutes 777.

case of dismissal or a requirement of resignation, which is given to every member of a police force by the Police (Appeals) Act, 1927 (*h*).

Under the Special Constables Order, 1923 (*i*), the chief constable may nominate and appoint special constables at any time (Art. 1); he may at his discretion determine the service of or suspend or dismiss any special constable (Art. 10); and special constables in the execution of their duty must act under his direction and control (Art. 5). See title SPECIAL CONSTABLES.

The County Police Act, 1839, s. 10 (*j*), directs that a chief constable of a county shall not exercise any other office or employment for hire or gain, but he is allowed, by the County Police Act, 1857, s. 2 (*k*), to hold the office of chief constable of any adjoining county or counties. [373]

6. Chief Constable of a Borough.—As stated in describing the office of chief constable, Watch Committees were placed in charge of police forces in boroughs, and in course of time, following the example of the county police forces, the officer in command of a borough force came to be designated its chief constable.

The Municipal Corporations Act, 1882, s. 191 (*l*), empowers the Watch Committee to appoint all the members of the police force, and at any time to suspend and dismiss any of them whom they think negligent in the discharge of their duty or otherwise unfit for the same. The section also empowers two justices having jurisdiction in the borough to suspend any member of the force for the same reasons. It would appear that this power of suspension by the justices would be exercisable in connection with the maintenance of the peace for which the justices have a responsibility as conservators of the peace under their commission. However, as the responsibility for the police of a borough rests on the Watch Committee, the chief constable is also responsible to the Watch Committee for the maintenance of the peace.

Under sect. 194 of the same Act (*m*), any member of a borough force is liable to imprisonment, fine or dismissal by the justices, on summary conviction of neglect of duty or of disobedience to a lawful order.

Also by sect. 26 of the County and Borough Police Act, 1859 (*n*), the Watch Committee are empowered to suspend, fine and reduce in rank any member of their force whom they think remiss or negligent in the discharge of his duty or otherwise unfit for the same.

The above provisions all apply to a chief constable as well as to the other members of a borough police force.

Under the Police Regulations, 1920 (*o*), the Watch Committee are the disciplinary authority of a borough police force, and under sect. 4 of the Police Act, 1919 (*p*), is bound to comply with these Regulations.

Any action by the Watch Committee of a disciplinary nature in connection with the chief constable should therefore be in accordance with these Regulations, and there is a right of appeal to the Secretary of State under the Police (Appeals) Act, 1927 (*q*), where any member of a police force is dismissed or required to resign as an alternative to dismissal. See "Retirement, etc., of a Chief Constable," where the matter is more fully dealt with.

(*h*) 12 Statutes 898.

(*j*) 12 Statutes 778.

(*l*) 10 Statutes 636.

(*n*) 12 Statutes 822.

(*p*) 12 Statutes 868.

(*i*) S.R. & O., 1923, No. 905.

(*k*) *Ibid.*, 818.

(*m*) *Ibid.*, 687.

(*o*) S.R. & O., 1920, No. 1484.

(*q*) *Ibid.*, 898.

The chief constable of a borough executes a public office and subject to the directions of the Watch Committee, and to the limitations applying to the position of chief officer of police, he controls the police force of the borough.

Although he does not possess all the statutory powers of a chief constable of a county police force, and is directly under the control of the Watch Committee, he is in close touch with the Watch Committee who as a general rule realise the fact that they ought not interfere with the direction of the borough force by an efficient chief constable. In practice the chief constable has the direction of the executive work of the borough police force, subject to the fact that much of the executive work of the police must be performed in accordance with the legal duties of a constable, and the Police Acts and the Police Regulations must be observed.

Under the Special Constables Order, 1923 (r), he is given the control over the special constables of the borough, as indicated under "Chief Constable of a County." See also title SPECIAL CONSTABLES. [374]

7. Retirement, etc., of a Chief Constable.—Like any other member of a police force, a chief constable may resign his position, but he should seek permission from the police authority or give one month's notice in writing (County and Borough Police Act, 1859, s. 4, as amended by County and Borough Police Act, 1919 (s)).

When entitled to retire on pension he may do so on giving the prescribed three months' written notice or such shorter notice as the police authority may accept (Police Pensions Act, 1921, s. 2 (1) (a) (t)).

A chief constable or assistant chief constable appointed after August 28, 1921, is not, except with the consent of the police authority, entitled to retire without a medical certificate and receive an ordinary pension (that is the pension he would be entitled to on completion of twenty-five or more years' approved service) unless at the time of his retirement he has attained the age of sixty (Police Pensions Act, 1921, s. 2 (3) (u)).

Under sect. 24 of the Police Pensions Act, 1921 (a), the provisions of the Act, unless otherwise expressly stated, apply to a chief officer of police in like manner as nearly as circumstances admit as they apply to any other member of a police force.

Retirement is compulsory, in the case of chief constables and assistant chief constables, on attaining the age of sixty-five, except that in special cases the police authority may extend their service for a further period not exceeding five years on being satisfied that such extension would be in the interests of efficiency (Police Pensions Act, 1921, s. 1 (1) (b)).

However, this provision as to the age of compulsory retirement does not apply to a member of a force who was serving on August 28, 1921, unless and until he has completed the period of service necessary to qualify him to retire without a medical certificate on pension equal to two-thirds of his pay at the time of his retirement, or if he had, before June 23, 1906, attained a rank above that of inspector (Police Pensions Act, 1921, s. 29 (1) (b) (c)).

Retirement is also compulsory for any member of a force who

(r) S.R. & O., 1923, No. 905.

(t) *Ibid.*, 874.

(a) *Ibid.*, 885.

(c) *Ibid.*, 887.

(s) 12 Statutes 821.

(u) *Ibid.*

(b) *Ibid.*, 873.

is required to retire by the police authority on the ground that his retention in the force would not be in the interests of efficiency, after he has become qualified by length of service to receive on retirement without medical certificate a pension at the rate of two-thirds of his annual pay (Police Pensions Act, 1921, s. 1 (2) (d)).

The question of the compulsory retirement, and in fact the dismissal of a chief constable, arose in 1927 in the borough of St. Helens, which has a separate police force.

The Watch Committee, on September 14, 1927, heard evidence in support of a complaint made by a member of the committee as to the conduct of the Chief Constable, and decided he was guilty of conduct unbecoming of a chief constable and by resolution asked him to retire. The Chief Constable refused to retire and in reply to a question by him the Town Clerk said he had been dealt with under the Municipal Corporations Act, 1882, s. 191 (4) (see "Chief Constable of a Borough,") and that he had no right of appeal. The Chief Constable denied that he was guilty of any unbecoming conduct and challenged the jurisdiction of the Watch Committee in the circumstances to require him to resign.

On September 26, 1927, the Watch Committee resolved that the retention of the Chief Constable in the force would not be in the interests of efficiency and accordingly required him to retire under the provisions of the Police Pensions Act, 1921, s. 1 (2) (e). This the Chief Constable declined to do and in accordance with the Police (Appeals) Act, 1927 (f), appealed to the Secretary of State. An inquiry under that Act was held at St. Helens on November 4, 1927, with the result that the action of the Watch Committee was declared to be irregular, the charge of misconduct against the Chief Constable was found not proved and his reinstatement in the force was directed, as from September 26, 1927. Further complaints affecting the administration of the force were made by the Watch Committee against the Chief Constable and a tribunal of inquiry under the Tribunals of Inquiry (Evidence) Act, 1921 (g), investigated these complaints at St. Helens in March and April, 1928. This tribunal found that none of the complaints had been substantiated, and blamed members of the Watch Committee for their enmity and unfairness to the Chief Constable, expressing doubts as to whether the chief constable of a borough should be at the mercy of a temporary majority of a Watch Committee in reference to breaches of discipline in the force or in regard to his own tenure of office. (See Reports as to St. Helens County Borough Police Force, 1928, Cmd. 3103.)

The Police Regulations apply to every member of a police force, therefore it would appear that if a police authority wish to dismiss their chief constable or to require him to resign as an alternative to dismissal, they should proceed in the manner directed by Police Regulations 12 to 24. If the police authority wish to compel their chief constable to retire under the provisions of sect. 1 (2) of the Police Pensions Act, 1921 (e), they should be prepared to prove that his retention in the force would not be in the interests of efficiency.

Although sect. 21 of the Police Pensions Act, 1921 (h), preserved any existing right of dismissing—or retiring as an alternative to dismissal—a member of a police force, the Police Regulations (which are statutory rules applying to every police force and with which the police authority must comply (Police Act, 1919, s. 4 (i)), prescribe the procedure in

(d) 12 Statutes 874.

(f) *Ibid.*, 898.

(h) 12 Statutes 884.

(e) *Ibid.*, 874.

(g) 8 Statutes 256.

(i) *Ibid.*, 868.

discipline cases, and there is an appeal to the Secretary of State under the Police (Appeals) Act, 1927 (*k*), in cases of dismissal or requirement to resign as an alternative to dismissal. A chief constable holds the office of constable, and unless he retires on his own application it would appear that he cannot be deprived of the office unless the provisions of sect 1 (2) of the Police Pensions Act, 1921 (*l*), apply to him or unless he is dismissed or required to resign after being dealt with in accordance with the Police Regulations.

The question of the continuing existence of the powers contained in statutes prior to the Police Act, 1919 (which authorised the Secretary of State to make regulations with which police authorities shall comply), has come before the High Court in one instance, that of the power of suspension for misconduct in a borough force.

In the case of *Wallwork v. Fielding* (*m*), where a borough police officer had been suspended by the Watch Committee and sued the Watch Committee to recover his pay for the period of suspension, it was held by the Court of Appeal that the Watch Committee had power to suspend and stop pay during the period of suspension, as the power of suspension conferred by sect. 191 (4) of the Municipal Corporations Act, 1882, was not impliedly repealed by the Police Act, 1919, and the regulations made thereunder which did not empower suspension.

In the course of their judgment the court pointed out that a later statute does not by implication repeal an earlier one unless their provisions are so inconsistent that both cannot stand together; that the power of suspension, to be of any use, has to be exercised summarily; but that procedure resulting in punishment may well be more deliberate and formal; and that it would be disastrous to hold that legislation dealing with procedure and punishment was to repeal this summary power given by the 1882 Act to suspend a person, pending inquiries as to his conduct.

This decision is confined to the power of suspension and there is nothing in the judgment to affect adversely the operation of the procedure directed by the Police Regulations, suspension being clearly distinguished from disciplinary procedure followed by punishment.

[375]

(*k*) 12 Statutes 898.

(*m*) [1922] 2 K. B. 66; 37 Digest 180, 24.

(*l*) *Ibid.*, 874.

CHIEF FINANCIAL OFFICER

See FINANCIAL OFFICER.

CHILD WELFARE

See MATERNITY AND CHILD WELFARE.

CHILDREN

See INFANTS, CHILDREN AND YOUNG PERSONS.

CHILDREN, EMPLOYMENT OF

See EMPLOYMENT OF CHILDREN.

CHIMNEYS

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See also titles : CELLAR DWELLINGS ;
HIGHWAY NUISANCES ;
SMOKE ABATEMENT.

Bye-Laws Relating to Chimneys.—The general law relating to the construction of chimneys is contained in sect. 157 of the P.H.A., 1875 (*a*), and bye-laws made thereunder. That section provides that every urban authority may make bye-laws with respect to the structure of chimneys of new buildings for securing stability and the prevention of fire, and for purposes of health. This provision does not apply to buildings belonging to any railway company and used for the purposes of such railway under statutory authority. The powers of the section were in the past frequently conferred on R.D.Cs. by the Local Government Board or their successors, the M. of H., under sect. 276 of the Act of 1875 (*b*) ; and now, by the operation of the R.D.Cs. (Urban Powers) Order, 1931 (*c*), all R.D.Cs. are invested with these powers. In boroughs or districts in which sect. 24 of the P.H.A. Amendment Act, 1907 (*d*), has been put in force by order of the Minister of Health, sect. 157 of the Act of 1875 is extended so as to enable the local authority to make bye-laws with respect to the height of chimneys ; and with respect to the structure of chimney shafts for the furnaces of steam-engines, breweries, distilleries or manufactories.

The model bye-laws of the M. of H., relating to new streets and buildings (*e*), deal with the following matters affecting chimneys, namely : materials, construction, "rendering" the inside and outside of flues, thickness of brickwork, support of chimney breast above opening,

(*a*) 13 Statutes 689.

(*c*) S.R. & O., 1931, No. 580 ; 24 Statutes 262.

(*d*) 13 Statutes 919.

(*b*) *Ibid.*, 741.

(*e*) Series IV. (Urban Series).

jambes of chimney opening, thickness of brickwork above flues, thickness of chimney backs, minimum and maximum height above roof, metal holdfast near flue, timber not to be near flue, face of certain brickwork above chimney opening to be "rendered," and openings in chimneys.

The Chimney Sweepers and Chimneys Regulation Act, 1840 (*f*), contains detailed provisions as to the construction of chimneys. These are practically obsolete, having regard to the general adoption of modern bye-laws under the Act of 1875. One of these provisions, however, namely, that relating to the size of chimney flues, should be mentioned as it is not covered by the bye-laws or the bye-law making power. It requires that every chimney or flue built or rebuilt in any wall, or of greater length than four feet out of the wall, not being a circular chimney or flue twelve inches in diameter, shall be in every section of the same not less than fourteen inches by nine inches. [376]

Chimney Required in Cellar Dwelling.—In connection with the subject of chimneys reference may be made to the provisions of sect. 72 of the P.H.A., 1875 (*g*), with respect to cellar dwellings. Under that section, one of the conditions which must be complied with if a cellar occupied as a dwelling at the date of the passing of the Act can be allowed to continue to be used as such is, that the cellar must have a fireplace with a proper chimney or flue (see title CELLAR DWELLINGS, Vol. 2, p. 465). [377]

Setting Fire to Chimney.—In boroughs and urban districts, and also in a rural district, the council of which have been invested by the M. of H. with the powers of the Town Police Clauses Act, 1847, relating to fires (*h*), as incorporated with the P.H.A., 1875, by sect. 171 thereof (*i*), every person who wilfully sets or causes to be set on fire any chimney is liable to a penalty of £5; and if any chimney accidentally catch or be on fire, the person occupying or using the premises in which the chimney is situated is liable to a penalty of ten shillings, unless such person proves, to the satisfaction of the justices before whom the case is heard, that the fire was in nowise owing to omission, neglect or carelessness of himself or his servant. [378]

Nuisance from Smoke.—The provisions of sect. 91 of the P.H.A., 1875 (*j*), as amended by the P.H. (Smoke Abatement) Act, 1926 (*k*), relating to nuisance arising from smoke, do not apply to the chimneys of private dwelling-houses, but otherwise "chimney" for the purpose of these provisions includes structures and openings of any kind whatsoever capable of emitting smoke (P.H. (Smoke Abatement) Act, 1926, sect. 3). A large building let in residential flats, also a west-end London club, have been held (*l*) not to be a private dwelling-house within the corresponding provisions of the P. H. (London) Act, 1891 (*m*). See, further, title SMOKE ABATEMENT. [379]

Access of Air to Chimney.—The access of air to a chimney of a building cannot be claimed as against the occupier of neighbouring land,

(*f*) S. 6; 9 Statutes 777 (repealed as to the Metropolis only by 7 & 8 Vict. c. 84, s. 1).

(*g*) 13 Statutes 655.

(*h*) Ss. 30—33; 13 Statutes 603, 604.

(*i*) 13 Statutes 696.

(*j*) *Ibid.*, 661.

(*k*) *Ibid.*, 1157.

(*l*) *Queen Anne Mansions v. Westminster Corpn.* (1901), 46 Sol. Jo. 70; 36 Digest 181, 260; *McNair v. Baker*, [1904] 1 K. B. 208; 36 Digest 181, 261.

(*m*) S. 24 (*b*); 11 Statutes 1041.

either as a natural right of property, or as an easement by prescription from the time of living memory, or by lost grant under the Prescription Act, 1832 (*n*). Thus in the case of *Bryant v. Lefever* (*o*), A. and B. were occupiers of adjoining houses, and for more than twenty years the occupier of A.'s house had enjoyed the access of air to the chimneys of the house. B. took down his house, and rebuilt the walls to a greater height, thereby causing A.'s chimneys to smoke. On these facts, it was held that no action was maintainable by A. against B., either on the ground that A. had acquired an easement which B. had interfered with, or on the ground that the nuisance complained of had been created by B. [380]

London.—The construction of chimneys in London is regulated by sects. 69 and 70 of the London Building Act, 1930 (*p*). Sect. 69 relates to chimneys in general and contains detailed provisions with respect to the construction of flues, chimney breasts, fireplace backs, hearthstones and other such matters. Sect. 70 relates to the construction of chimney shafts for furnaces of steam engines, breweries, distilleries and manufactories.

By sect. 96 (1) (*j*) of the P.H. (London) Act, 1891 (*q*), it is unlawful to occupy or let for occupation any underground room unless (*inter alia*) the room has a fireplace with a proper chimney or flue.

The liability of the occupier of premises for chimney fires is now governed by sect. 60 of the L.C.C. (General Powers) Act, 1934, by which the earlier provision in sect. 30 of the L.C.C. (General Powers) Act, 1900 (*r*), is repealed.

The new enactment allows a notice to be given by the L.C.C. to the occupier of a house or building, at which the London fire brigade have attended in consequence of a chimney or duct for collecting or carrying off smoke, vapour or fumes from apparatus used for cooking food or heating purposes, being on fire, requiring the occupier to pay a named contribution to the fire brigade, not exceeding 20s. in the case of a chimney and £5 in the case of a duct.

The sum named in any such notice is recoverable summarily as a civil debt, but the court may reduce the demand made by the council. The occupier of the house or building may also recover the whole or a part of any sum paid by him to the council from any other person through whose neglect or wilful default the fire arose.

Nuisance from smoke may be abated under sect. 24 of the P.H. (London) Act, 1891 (*s*), as amended by the P.H. (Smoke Abatement) Act, 1926, s. 1 (2) (*t*). For the purpose of these provisions "chimney" includes structures and openings of any kind whatsoever capable of emitting smoke (*a*), but the provisions do not apply to private dwelling-houses (*b*). Furnaces in factories and other such buildings must be so constructed as to consume their own smoke as far as possible (*c*). See, further, title SMOKE ABATEMENT. [381]

(*n*) 5 Statutes 823.

(*o*) (1879), 4 C. P. D. 172; 19 Digest 61, 349.

(*p*) 23 Statutes 252, 254. See also s. 71, as to pipes for conveying smoke, vapour, etc.

(*q*) 11 Statutes 1078.

(*r*) *Ibid.*, 1246.

(*s*) *Ibid.*, 1041.

(*t*) 13 Statutes 1158.

(*a*) P.H. (Smoke Abatement) Act, 1926, s. 3; 13 Statutes 1159.

(*b*) P.H. (London) Act, 1891, s. 24 (*b*); 11 Statutes 1041; and see note (*l*), *ante*, p. 155.

(*c*) *Ibid.*, s. 23; 11 Statutes 1040.

CHLORINE WORKS

See ALKALI, ETC., WORKS.

CHOLERA

See INFECTIOUS DISEASES.

CHURCHES

See PRIVATE STREETS ; RATES AND RATING.

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CINEMATOGRAPHS

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Preliminary Observations.—The law relating to the subject-matter is of a restrictive character, and is designed principally to secure the safety of the public against the risks attending the use of inflammable film in places of public entertainment, and to prevent outbreaks of fire in premises where raw celluloid or cinematograph film is stored. The law also provides for the control of the character of cinematograph performances and the general conduct and management of places where such entertainments take place.

These objects are secured by means of a system of licensing, registration and regulation.

Under the Cinematograph Act, 1909, premises used for cinematograph exhibitions must be licensed (*a*), and power is given to the Secretary of State to make regulations with regard to the safety of the public (*b*). The present regulations are dated July 30, 1923, and June 6, 1930 (*c*).

General control over cinematograph exhibitions, extending considerably beyond provisions as to safety alone, is secured by the power conferred on licensing authorities (*d*) to attach conditions to their licences (*e*).

The Celluloid and Cinematograph Film Act, 1922 (*f*), provides for the registration, with borough and district councils, of premises used for storing raw celluloid or cinematograph film (sect. 1 (1) (*a*)), and it is the duty of these councils to see that such premises comply with the requirements laid down by the Act (*g*).

(*a*) Cinematograph Act, 1909, s. 1; 19 Statutes 352.

(*b*) *Ibid.*

(*c*) Regulations dated July 30, 1923 (S.R. & O., 1923, No. 983), and June 6, 1930 (S.R. & O., 1930, No. 361).

(*d*) For meaning of "licensing authority," see *post*, p. 161.

(*e*) S. 2 (1); 19 Statutes 352.

(*f*) 13 Statutes 977.

(*g*) S. 4 (1); 13 Statutes 980.

Apart from these statutory restrictions, the film industry have, in their own interest, set up a Board of Film Censorship which, though having no legal status, and possessing no compulsory powers, has acquired a position of great influence in controlling the character of the films exhibited throughout the country. [382]

CINEMATOPHGRAPH ACT, 1909

General Provisions.—An exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus, referred to as a cinematograph exhibition, for the purpose of which inflammable films are used, may only be given, except in the special cases mentioned later, in premises licensed for the purpose, and the regulations (h) made by the Secretary of State for securing safety must always be observed (i).

Although the words of sect. 1 are entirely unlimited and general, and would include every occasion on which a film is run through a cinematograph machine, they have been construed as referring to exhibitions given in places of public entertainment. The showing of inflammable films by a dealer to prospective customers in the *bona fide* exercise of his trade, the general public being as far as possible excluded, does not amount to giving an exhibition within the meaning of the Act. Premises where such exhibitions take place need not be licensed, nor is compliance with the regulations for securing safety necessary (k).

The Act does not apply to a cinematograph exhibition given in a private dwelling-house to which the public are not admitted, whether on payment or otherwise (l), nor does it apply to the use for such exhibitions, under the authority of a Secretary of State (m), or the Admiralty, of any building at a camp, station, or naval establishment, or of any ship, under the direction and control of an officer (n) or committee having official responsibility for such matters (n). Where such buildings are let to entertainment contractors with the approval of the government authority concerned, they must, however, be licensed, and the regulations of the Home Secretary must be complied with (o).

Premises only occasionally and exceptionally used for cinematograph exhibitions on not more than six days in any one calendar year do not require a licence, provided the occupier of the premises gives to the licensing authority (p), and to the chief officer of police (q) of the police area (q) in which the premises are situate, not less than seven

(h) See regulations dated July 30, 1923 (S.R. & O., 1923, No. 983), and June 6, 1930 (S.R. & O., 1930, No. 631). By the repealed regulations of February 18, 1910, it was provided that the gangways, staircases and passages leading to the exits must be kept clear of obstructions during the presence of the public. The fact that the full number of seats for which a building had been licensed had not been installed was held not to justify the occupiers in allowing spectators to stand in the gangways, though their number did not cause the full number allowed by the licence to be exceeded. *Potter v. Watt* (1914), 79 J. P. 212; 42 Digest 923, 184.

(i) S. 1; 19 Statutes 352.

(k) *A.-G. v. Vitagraph Co., Ltd.*, [1915] 1 Ch. 206; 42 Digest 923, 183.

(l) S. 7 (4); 19 Statutes 355.

(m) For definition of "Secretary of State" and "officer," see Army Act, 1881, s. 190 (1), (4); 17 Statutes 241.

(n) *Ibid.*, s. 174A, inserted in the Army Act and the Air Force Act by Army and Air Force (Annual) Act, 1932, s. 7; 25 Statutes 611.

(o) As to application of the Celluloid and Cinematograph Film Act to such premises, see *post*, note (m), p. 168.

(p) For meaning of "licensing authority," see *post*, p. 161.

(q) S. 2 (6); 19 Statutes 352. "Police area" and "chief officer of police" mean, respectively, the City of London and the Commissioner of City Police, the

days' notice in writing of an intended exhibition. The regulations of the Secretary of State, and any conditions imposed by the licensing authority as notified to the occupier in writing, must, however, be complied with (r).

Exhibitions given in buildings or structures of a moveable character do not require a licence from the licensing authority of the area in which they are given, if the owner of the building or structure has been granted a licence by the licensing authority of the area in which he ordinarily resides (s).

The owner of the moveable structure must, however, give not less than two days' notice in writing of an intended exhibition to the licensing authority of the area, and to the chief officer of police of the police area, in which an exhibition is to take place. He must also comply with the regulations of the Secretary of State, and with the conditions imposed by the authority granting the licence, notified to him in writing (t).

A licence granted to the owner of a moveable building must have attached a plan and description of the building, certified with the approval of the licensing authority. Such licence may provide that the conditions or restrictions contained therein may be modified by the authority issuing the licence, or by the licensing authority for the area in which an exhibition is to be given. The licence must be produced on demand to any police constable, or authorised officer of either authority (u).

Where it is intended to give an occasional exhibition in unlicensed premises, it would seem to be the duty of the licensing authority, upon receipt of the required notice, to satisfy themselves that compliance with the regulations is possible, and to decide, after an inspection made on their behalf, upon any additional precautions that it may be necessary to impose in regard to exit doors and other matters affecting safety (a).

In the case of moveable buildings it should be ascertained whether the building corresponds with the certified plan and description attached to the licence and whether the regulations and any conditions imposed by the licensing authority are complied with (b).

The necessity for ensuring that the regulations and any conditions or restrictions attached to the licence are, in fact, complied with at the time of the exhibition should not be overlooked. [383]

Non-Inflammable Films.—The Act and regulations apply only to exhibitions for the purpose of which inflammable films are used (c). Where the films used are not inflammable, premises need not be licensed, nor is compliance with the regulations required. The question whether a film is, or is not, inflammable is one that has frequently to be decided, and is not without difficulty.

Films have to be handled, placed in position, changed and repaired, and observance of the necessary precautions during these manipulations

metropolitan police district and the Commissioner of Metropolitan Police, a county and its chief constable, a borough and its chief constable, a town not a borough having separate police under a local Act, and the officer having command of the police, the Tyne under the Tyne Improvement Commissioners and the officer having command of the police. Police Act, 1890, s. 33, Sched. III.; 12 Statutes 852, 853.

(r) S. 7 (2); 19 Statutes 354.

(s) S. 7 (3) (a).

(t) S. 7 (3) (b), (c).

(u) Regulation 26 (S.R. & O., 1923, No. 983).

(a) *Ibid.*, 17. S. 7 (2); 19 Statutes 354.

(b) See H.O. Circular, No. 548805/11, dated June 19, 1930.

(c) Act of 1909, s. 1; 19 Statutes 352.

is of great importance. It is clear that the question does not depend alone on the inflammability of a film when in the apparatus, its inflammability when outside the apparatus must also be taken into account (*d*).

In the absence of any statutory definition, it would appear that "inflammable" must be given its ordinary meaning, viz. capable of being set on fire, and that a non-inflammable film, therefore, is a film which will not burn either when in or when outside the apparatus. A film that does not answer this test would, it is submitted, fall within the scope of the Act.

If this be the correct view, an exhibition with so-called "non-flam" or "safety" films, which will in fact burn, and are more correctly described as slow combustion films, comes within the scope of the Act in the same way as an exhibition with the kind of film commonly used for public entertainments. [384]

Licensing Authorities.—The local authority responsible for the administration of the Act is, in an administrative county, the county council (*e*), in a county borough, the county borough council (*f*), and, where the premises are licensed by him, the Lord Chamberlain (*g*). A county council and a county borough council may, with or without any restrictions or conditions, delegate any of their powers under the Act to committees of the council, to district councils, or to justices sitting in petty sessions, and are, with district councils and justices to whom powers have been delegated, referred to as the licensing authority (*h*).

The position of district councils and justices exercising delegated powers would appear to be that of administrative agents of the delegating authority, and the opinion has been expressed that they are liable to account to county or county borough councils, as the case may be, for any fees they may receive on their behalf (*i*). It is doubtful whether a county or county borough council, by a delegation of their powers, can relieve themselves of all responsibility for the administration of the Act and for seeing that the regulations are adequately enforced. They are recommended to satisfy themselves from time to time as to the adequacy of the arrangements made for such administration and enforcement by the authorities to whom their powers have been delegated (*k*).

Justices, when acting under delegated powers, are not sitting as

(*d*) *Victoria Pier (Folkestone) Syndicate, Ltd. v. Reeve* (1912), 76 J. P. 374; 42 Digest 924, 137.

(*e*) S. 2 (1); 19 Statutes 352.

(*f*) S. 6; 19 Statutes 354.

(*g*) S. 7 (1); 19 Statutes 354. The power of licensing premises for cinematograph exhibitions is only exercised by the Lord Chamberlain in respect of premises licensed by him for stage plays under the Theatres Act, 1843; 19 Statutes 335, where the cinematograph exhibition is merely ancillary to the use of the premises for stage plays. If an independent exhibition is given apart from a stage play, the premises would require a licence from the county council.

(*h*) S. 5; 19 Statutes 354. There is great diversity of practice among county councils in regard to delegation of powers. Of the sixty-two councils in England and Wales only nineteen keep the administration of the Act in their own hands. The remainder delegate either wholly or in part to one or more of the following authorities: county justices, borough justices, borough councils, U.D.Cs. and R.D.Cs. A delegation may apparently be revoked at any time (see *Huth v. Clarke* (1890), 25 Q. B. D. 391; 83 Digest 17, 63).

(*i*) 79 J. P. Newspaper 346.

(*k*) H.O. Circular, No. 548805/11, dated June 19, 1930.

a court of summary jurisdiction and have no power to state a case (*l*).
[385]

Discretion of Licensing Authorities.—A wide discretion is conferred on licensing authorities as to the persons to whom licences may be granted or transferred. They may grant licences to such persons as they think fit (*m*), and so long as they exercise their discretion reasonably they may, when considering as to the fitness of an applicant for a licence, have regard to every relevant consideration which tends to show whether he is a person in whom, in the circumstances, they may have confidence (*n*). They may, for example, refuse to grant a licence to a company most of whose shareholders are alien enemies. They must, however, confine themselves to the merits of the case before them, and must not be guided by extraneous considerations (*o*).

In hearing applications for licences, the licensing authority are carrying out a judicial function, and *certiorari* will lie to bring into the High Court for review any decision they may give (*p*).

Although the Act does not expressly allow objections to the grant of a licence to be made to the licensing authority, it is customary for licensing authorities to hear objectors and to consider their representations before coming to a determination. [386]

Provisions as to Licences.—Subject to the regulations of the Secretary of State for securing safety, the licensing authority may grant licences to such persons as they think fit to use premises (*q*) specified in the licence for cinematograph exhibitions on such terms and conditions and subject to such restrictions as they may determine (*r*). When once a licence has been granted, the conditions attached thereto cannot be altered in any way during its currency (*p*), unless, as is sometimes the case, the licensing authority have power under some other Act to

(*l*) *Huish v. Liverpool J.J.*, [1914] 1 K. B. 109; 42 Digest 920, 156.

(*m*) S. 2 (1); 19 Statutes 352.

(*n*) *R. v. L.C.C., Ex parte London and Provincial Electric Theatres, Ltd.*, [1915] 2 K. B. 466, C. A., *per* BUCKLEY, L.J., at p. 488; 42 Digest 920, 154.

(*o*) *Ibid.*, p. 466; 42 Digest 920, 154. The question as to what may be taken into account as extraneous considerations is by no means clear, *e.g.* there is some difference of opinion as to whether the Licensing Authority may consider such questions as (i.) the number of existing cinemas in the district, and (ii.) whether it is in the public interest that a new cinema should be licensed.

(*p*) *R. v. L.C.C., Ex parte Entertainments Protection Association*, [1931] 2 K. B. 215, C. A.; Digest (Supp.).

(*q*) The Act is not clear as to whether a cinematograph licence is only a licence to the person to whom it is granted to use specified premises for the purpose of a cinematograph exhibition, or a licence of the premises themselves. S. 1 refers to "premises licensed for the purpose;" s. 2 (1), on the other hand, provides that the licensing authority "may grant licences to such persons as they think fit to use the premises specified in the licence," and s. 2 (3) empowers the licensing authority to "transfer any licence granted by them to such other person as they think fit." In *Bruce v. McManus*, [1915] 3 K. B. 1; 42 Digest 924, 188, the court, although deciding the case on other grounds, appeared to take the view that the premises themselves are licensed.

(*r*) S. 2 (1); 19 Statutes 352. There is no express provision for granting a "provisional" licence for premises about to be constructed, but it is not uncommon for plans to be approved informally, a licence being subsequently granted if the building is constructed in accordance therewith. In such a case it would appear to be advisable for the approval to be subject to a time limit. The licence only covers cinematograph exhibitions, and, in districts where a licence is required for the use of premises for public music, singing or dancing, a separate licence must be obtained from the proper authority for these purposes if such entertainments are to be given either singly or in connection with a cinematograph exhibition. (See title MUSIC, SINGING AND DANCING.)

modify or waive such conditions or attach new or substituted terms to the licence (s).

All licences are to be in force for one year or for such shorter period as the licensing authority may determine, unless the licence has been previously revoked (t). A licence may also be transferred by the licensing authority to such other person or persons as they may think fit (u).

An applicant for a licence, or transfer of a licence, must give not less than seven days' notice in writing of his intention to apply to the licensing authority and to the chief officer of police of the police area (a) in which the premises in question are situate. It is not, however, necessary to give such notice where the application is for the renewal of an existing licence held in respect of the same premises (b).

Under the regulations of the Secretary of State, every licence must contain a clause providing for its suspension by the licensing authority in the event of any failure on the part of a licensee to carry out the regulations, or of the building becoming otherwise unsafe, or of any material alteration being made in the building or enclosure without the consent of the licensing authority (c). [387]

Conditions of Licences.—The terms, conditions and restrictions of a licence need not be confined to questions of safety only, and a condition that premises shall not be opened on Sundays, Christmas Day or Good Friday is valid (d). It is, moreover, no objection to the validity of a condition that it prevents the use of licensed premises at certain times for exhibitions given with films which are not inflammable and which ordinarily do not require a licence at all (e).

A condition, however, must be reasonable, in respect of the use of the licensed premises, and in the public interest (f).

A condition that "no film shall be shown that is objectionable or indecent, or anything likely or tending to educate the young in the wrong direction, or likely to produce riot, tumult or breach of the peace, and no offensive representations of living persons shall be shown" and providing that if the licensing authority give notice of objection to a film on any of the grounds mentioned such film shall not be shown is a reasonable and valid condition. In such a case *certiorari* to quash a notice of objection will not be granted by the court to persons who have the sole right of exhibition of a film and have lost the benefit of their contract with the licensee by reason of its prohibition as they cannot be regarded as aggrieved parties (g). On the other hand, a condition that no film shall be exhibited, if notice has been given to the licensee that any three justices sitting in petty

(s) See, for example, L.C.C. (General Powers) Act, 1923, s. 16; 19 Statutes 357.

(t) S. 2 (2); 19 Statutes 352. As to revocation of a licence, see *post*, note (c), p. 167.

(u) S. 2 (3); 19 Statutes 352.

(a) See *ante*, note (q), p. 159.

(b) S. 2 (4); 19 Statutes 352.

(c) Regulation 25 (S.R. & O., 1923, No. 983).

(d) *L.C.C. v. Bermondsey Bioscope Co.*, [1911] 1 K. B. 445; 42 Digest 921, 164.

(e) *Ellis v. North Metropolitan Theatres, Ltd.*, [1915] 2 K. B. 61; 42 Digest 919, 148.

(f) *Theatre de Luxe (Halifax), Ltd. v. Gledhill*, [1915] 2 K. B. 49, *per* ATKIN, J., at p. 59; 42 Digest 920, 160.

(g) *Ex parte Stott*, [1916] 1 K. B. 7; 42 Digest 921, 167.

sessions object to such film, is uncertain and unreasonable and will not be enforced (*h*). [388]

A condition that "no film is to be shown which has not been certified for public exhibition by the British Board of Film Censors" has also been held unreasonable on the ground that it involves delegation of the licensing authorities' powers otherwise than in accordance with the Act (*i*). The licensing authority have no power to create an absolute body from which no right of appeal exists, and must reserve to themselves the right to review the decisions of the Board. The addition of the words "without the express consent of the licensing authority" would, however, make such a condition reasonable and *intra vires* (*k*). [389]

It is also a reasonable and enforceable condition that no film, which has not been passed for universal exhibition by the British Board of Film Censors, shall be exhibited in the premises, without the express consent of the licensing authority, during the time that any child under, or appearing to be under, the age of sixteen years is therein, if unaccompanied by a parent or *bona fide* adult guardian of such child (*l*). [390]

A condition that children under fourteen years of age should not be allowed on licensed premises after 9 p.m. unless accompanied by a parent or guardian, and that children under the age of ten years should not be allowed on the premises in any circumstances after that hour is *ultra vires*, there being no connection between the ground on which the condition was imposed, namely the health and welfare of young children, and the subject-matter of the licence, namely the use of the premises for the giving of cinematograph exhibitions (*m*). [391]

Conditions, however, requiring the licensees to undertake that no tickets should be distributed to children under fourteen years of age, either for free or reduced admission, that presents should not be given to children under sixteen years of age by way of inducement, and that when notification of infectious disease in a school had been given, children attending that school should be excluded from the entertainment, would be valid (*n*). [392]

In addition to the matters already indicated it is customary to impose conditions or restrictions dealing with (*inter alia*) the site of the premises, the structure of the building, heating, lighting and ventilating installations, equipment and fittings, and the conduct and management of the premises during performances. [393]

The position of a licensee who has been granted, and has accepted a licence with notice of certain conditions which are invalid, is somewhat obscure. The opinion has been expressed that he may nevertheless take advantage of the contention that such conditions are *ultra vires* and not binding on him (*o*). On the other hand, it may be argued that if he accepts a licence in such circumstances he is liable, if he breaks any of the conditions, to the penalties imposed by sect. 3 of the Act (*p*). [394]

(*h*) *R. v. Burnley JJ., Ex parte Longmore* (1916), 85 L. J. (K. B.) 1565; 42 Digest 921, 161.

(*i*) *Ellis v. Dubowski*, [1921] 3 K. B. 621; 42 Digest 921, 162.

(*k*) *Ellis v. Dubowski*, *supra*, per LAWRENCE, C.J., at p. 625; *Mills v. L.C.C.*, [1925] 1 K. B. 213; 42 Digest 922, 171.

(*l*) *Mills v. L.C.C.*, *supra*.

(*m*) *Theatre de Luxe (Halifax), Ltd. v. Gledhill*, [1915] 2 K. B. 49; 42 Digest 920, 160.

(*n*) *R. v. Burnley JJ., Ex parte Longmore*, *supra*.

(*o*) *Theatre de Luxe (Halifax), Ltd. v. Gledhill*, *supra*, per LUSH, J., at p. 54; *Ellis v. Dubowski*, *supra*, per SANKEY, J., at p. 627.

(*p*) *Ellis v. Dubowski*, *supra*, per AVORY, J., at p. 626.

It is not uncommon for such conditions and restrictions as above mentioned to be embodied in a set of "rules" or "regulations" of general application to all licensed premises. It is important to distinguish between the "rules" or "regulations" of a licensing authority and the regulations of the Secretary of State compliance with which is provided for in the Act itself. In order that the former may be effective, it is necessary that compliance with them should be made a specific condition of the licence, as no power to make regulations of general application is conferred by the Act on licensing authorities. [395]

Power to grant permission for the Sunday opening of premises for cinematograph exhibitions, notwithstanding anything in any enactment relating to Sunday observance, may be conferred on licensing authorities by the Sunday Entertainments Act, 1932 (g). [396]

Film Censorship.—The Act contains no express provisions relating to film censorship; and control over the character of cinematograph performances rests, therefore, with the licensing authorities who have power, by means of conditions attached to their licences, to prevent the exhibition of objectionable films (r).

In addition to the direct control over the character of cinematograph performances secured by a condition prohibiting the exhibition of films belonging to categories deemed to be objectionable, it is the practice of most licensing authorities to accept and enforce the decisions of the British Board of Film Censors and to provide by their licences that no film which has not been passed for public exhibition by the Board shall be shown without the express consent of the licensing authority.

The Board of Film Censors is an unofficial body instituted in 1912 by the trade as a self-imposed measure of restraint on the suggestion of the then Home Secretary. The Board has no statutory or constitutional authority to enforce its decisions, but, owing to the support it receives from licensing authorities, it is able indirectly to exercise very large powers of control over films. It is maintained by the film industry out of fees payable on the examination of films, and its impartiality and independence are secured by the appointment as president of a well-known man who is unconnected with the industry and in whom the public may be expected to have confidence. The president appoints his own examiners who are responsible to him alone.

It is obvious that, where, owing to a film not having obtained a certificate from the Board, it is necessary for the express consent of the licensing authority to be obtained for its public exhibition, some provision should be made by the licensing authority for them or their representatives to view the film before permission for its exhibition is granted or refused.

Arrangements which permit of a joint inspection by representatives of two or more licensing authorities with a view to securing uniformity of action have been found convenient in practice (s).

(g) 25 Statutes 921. See title SUNDAY ENTERTAINMENTS. Where a county council or county borough council have delegated their powers under the Cinematograph Act, 1909, to justices sitting in petty sessions or district councils, the latter, as having power to grant licences under the Act of 1909, would appear to be the authorities to grant permissions for Sunday opening under the Sunday Entertainments Act, 1932 (25 Statutes 921). In the event of the delegating councils revoking their delegation under the Act of 1909, the power to grant permissions under the Act of 1932 would appear to revert to them as well as the powers under the Act of 1909, in respect of which the delegation had been revoked.

(r) See *ante*, p. 163.

(s) Such an arrangement is made by the L.C.C. and the Surrey and Middlesex County Councils.

It is the practice of the Board of Film Censors to distinguish between films suitable for universal exhibition ("U" films) and films suitable for exhibition to adult audiences ("A" films) which by implication are unsuitable for children. The Secretary of State has approved of the principle that the responsibility for permitting a child under sixteen years of age to see an "A" film should rest upon the child's parent or guardian (*t*). To give practical effect to the Board's classification, the Secretary of State has recommended the adoption by all licensing authorities of model conditions, the aim of which is to ensure that the parents or guardians of children under sixteen are given every possible opportunity of knowing in advance the categories in which films in a cinema programme have been placed by the Board of Film Censors (*u*).

The model conditions recommended by the Home Secretary provide, *inter alia*, that children under sixteen years of age shall not see an "A" film unless they are accompanied by a parent or *bona fide* guardian, and that immediately before the exhibition of any film a notification that such film is classed either "A" or "U" shall be thrown on the screen for a period of not less than ten seconds. The model conditions also require that there shall be continuously exhibited at each entrance to the premises, so as to be easily seen and read by members of the public, a notice stating the title of each film in the programme, the time at which it is to be shown, and its category, "A" or "U." It is also provided that posters, advertisements and programmes relating to any films shall contain no objectionable matter and shall indicate clearly in which category, "A" or "U," the film has been placed by the Board of Film Censors (*a*).

A Film Censorship Consultative Committee appointed by the Home Secretary and comprising representatives of licensing authorities in England and Wales acts as a link between the licensing authorities and the Board of Film Censors.

The functions of this committee are to consider broad questions of film censorship on which the local licensing authorities or the Board of Film Censors may desire to have guidance, and to secure greater co-operation between licensing authorities and the Board. By this means it is sought to attain uniformity of practice in the exercise of local control over the character of cinematograph exhibitions (*b*).

The secretary of the committee keeps at the Home Office a list of films classed "A" by the Board of Film Censors which are of an unusually horrifying character and therefore particularly unsuitable for children. He is prepared to give information regarding such films to any individual licensing authority so that any necessary steps may be taken to prevent children from seeing them.

It would appear to be advisable in all questions relating to existing systems of film censorship, and before adopting any new methods of control of films, for local licensing authorities to consult the Consultative Committee. [397]

Fees.—The fees payable on the grant, renewal or transfer of a licence are fixed by the licensing authority. The maximum fee for a grant or renewal for one year is £1, or in the case of a grant or renewal for any less period 5s. per month, so, however, that the aggregate of the fees

(*t*) H.O. Circular, No. 537492/3, December 16, 1929.

(*u*) H.O. Circular, No. 596323/20, March 6, 1932.

(*a*) *Ibid.*

(*b*) *Ibid.*

payable in any year does not exceed £1. The fee for the transfer of a licence must not exceed 5s. (c). [398]

Penalties.—The owner of a cinematograph or other apparatus using the apparatus or allowing it to be used, or the occupier of any premises allowing the premises to be used in contravention of the provisions of the Act, or the regulations made thereunder, or of the conditions and restrictions upon or subject to which any licence relating to the premises has been granted, is liable, on summary conviction, to a fine not exceeding £20, and (in the case of a continuing offence) to a further penalty of £5 a day while the offence continues (d). In such circumstances, the licence, if any, is liable to be revoked by the licensing authority (e).

It is the occupier and not the licensee who is liable for any offence in respect of the user of premises and against whom proceedings should always be taken, irrespective of whether he is also the holder of the licence. A manager who is the servant of a company owning and occupying the premises cannot be convicted of using them contrary to the provisions of the Act as he is not the actual occupier (f). On the ground of administrative convenience, it would be advisable for the licence in respect of any premises to be granted to the person in occupation of the premises. [399]

Inspection and Right of Entry.—A constable (g) or any officer appointed for the purpose by a licensing authority has the right of entry into any premises, whether licensed or not, in which he has reason to believe that a cinematograph exhibition is being or is about to be given, with a view to seeing whether the provisions of the Act and the regulations or the conditions of any licence have been complied with. The penalty for preventing or obstructing the entry of any constable or officer is, on summary conviction, a fine not exceeding £20 (h).

The need for the strictest compliance with the regulations has been pointed out, and licensing authorities, before acceding to an application for the grant of a licence in respect of any premises, should take steps, by means of inspections by competent persons, to ensure that they comply with the requirements of the regulations as regards structure and safety. They should exercise with caution their power to waive, in appropriate circumstances, the application of any of the requirements of a regulation. After a licence has been granted, regular and systematic inspections of the premises should be made to ensure that all the requirements of the licensing authority are complied with, and to see that the regulations as to unobstructed ingress and egress, the prevention of over-crowding, the provision of sufficient attendants, the proper handling of films, due safeguards against fire and other matters, are constantly observed (i). [400]

CELLULOID AND CINEMATOGRAPH FILM ACT, 1922

Object and Extent of the Act.—The Act is designed to make better provision for the prevention of fire in premises where raw celluloid or

(c) Cinematograph Act, 1909, s. 2 (5) ; 19 Statutes 352.

(d) S. 3 ; 19 Statutes 353.

(e) *Ibid.* The licensing authority have no power to revoke a licence except upon conviction under s. 3. Provision for suspension of a licence is made by Regulation 25 (S.R. & O., 1923, No. 983) ; see *ante*, p. 163.

(f) *Bruce v. McManus*, [1915] 3 K. B. 1 ; 42 Digest 924, 188.

(g) It is not necessary for constables to be appointed for the purpose, *McVittie v. Turner* (1915), 80 J. P. 25 ; 42 Digest 919, 142.

(h) S. 4 ; 19 Statutes 353.

(i) H.O. Circular, No. 548305/11 ; June 19, 1930.

cinematograph film is stored or used and applies to the keeping or storing of raw celluloid or cinematograph film in quantities exceeding at any one time, in the case of raw celluloid, one hundredweight, and in the case of film, twenty reels or eighty pounds in weight (*k*).

The Act also extends to raw celluloid and cinematograph film in smaller quantities, unless, in the case of raw celluloid, it is kept in a separate and properly closed metal box or case, and in the case of cinematograph film, each reel is so kept, except when the celluloid or film is exposed for the purpose of the work carried on in the premises concerned (*l*).

Cinematograph film is deemed to be kept in any premises where it is temporarily deposited for the purpose of examination, cleaning, packing, rewinding or repair, but neither celluloid nor cinematograph film comes within the scope of the Act while temporarily deposited in the course of delivery, conveyance or transport (*l*). The Act does not apply to premises licensed under the Cinematograph Act, 1909, or, except in certain cases, to premises governed by the Factory and Workshop Acts, 1901 to 1920 (*m*).

For the purpose of the Act, "cinematograph film" means any film containing celluloid which is intended for use in a cinematograph or any similar apparatus, and "celluloid" means and includes the substances known as celluloid and xylonite and other similar substances containing nitrated cellulose or other nitrated products, but excludes substances which are explosives within the meaning of the Explosives Act, 1875 (*n*).

"Raw celluloid" means celluloid which has not been subjected to any process of manufacture and celluloid scrap or waste (*o*).

In the case of Liverpool, it is provided by sect. 11 (3) that the Secretary of State may by order direct that any of the provisions of the Liverpool Corpn. Act, 1921 (*p*), which relate to keeping, storing or manipulation of celluloid and cinematograph films, shall cease to have effect, but that so long as those provisions continue to have effect the Celluloid and Cinematograph Film Act, 1922, is not to apply to Liverpool.

The Act does not apply to the administrative county of London (*q*).

[401]

Responsible Authorities.—The authorities responsible for the execution and enforcement of the Act are county borough councils, borough councils, urban district councils and rural district councils and it is their duty to see that the Act is complied with (*r*). [402]

(*k*) Celluloid and Cinematograph Film Act, 1922, s. 2 (1) (a), (2) (a) ; 13 Statutes 979.

(*l*) S. 2 ; 13 Statutes 979.

(*m*) S. 2 (2) (ii.), (iii.) ; 13 Statutes 979. The keeping or storing of films in unlicensed buildings at a camp, station, or on a ship, used for cinematograph exhibitions under the direction and control of an officer or committee having official responsibility for such matters, is deemed to be part of the use thereof for the giving of the exhibitions and the provisions of this Act do not apply to such storing (Army Act, s. 174A, and Air Force Act, s. 174A, inserted by Army and Air Force (Annual) Act, 1932, s. 7 ; 25 Statutes 611). Premises to which the Factory and Workshop Acts, 1901 to 1920, apply are within the scope of the Act if (i.) they are situate under residential premises ; (ii.) they are so situate that a fire therein might interfere with the means of escape from the building or any adjoining building ; (iii.) they form part of a building, unless such part either (a) is separated from any other part of the building by fire-resisting partitions and doors, or (b) is so situated and constructed that a fire occurring therein is not likely to spread to other parts of the building, and its use is sanctioned by the local authority.

(*n*) S. 9 ; 13 Statutes 981.

(*o*) *Ibid.*

(*p*) 11 & 12 Geo. 5, c. lxxiv.

(*q*) S. 11 (2) ; 13 Statutes 981.

(*r*) Ss. 4 (1), 9 ; 13 Statutes 980, 981.

Provisions as to Safety.—No premises are to be used for the purpose of keeping or storing raw celluloid or cinematograph film in the quantities stated in the Act (s) unless the occupier has furnished to the local authority in writing his name, the address of the premises and the nature of the business there carried on (t). When applying to the local authority with the statement required by the Act, and on January 1 of every succeeding year, the occupier must pay to the local authority the fees prescribed by the Secretary of State (u). The Secretary of State in pursuance of his power under the Act has fixed the fees to be paid on both occasions at £2 (a). The premises must also be provided with means of escape in case of fire in accordance with the requirements of the local authority, and these must be maintained in good condition and free from obstruction (b). [403]

The premises themselves must not be under residential premises (c), nor must they be in such a situation as to interfere in case of fire therein with means of escape from the building of which they form part or from any adjoining building (d).

Where the premises form part of a building they must either be separated from the rest of the building by fire-resisting partitions (including ceilings and floors) and fire-resisting self-closing doors, or be so situated and constructed that a fire occurring therein is not likely to spread to other parts of the building. In the latter case the sanction of the local authority in writing to such user, subject to such conditions as they may think fit to impose, must be obtained (e). [404]

Any person aggrieved by any requirement of a local authority, or by the refusal of the local authority to grant any sanction, or by the conditions attached to any such sanction, may, within seven days after notice of such requirement, refusal or conditions, appeal to a court of summary jurisdiction, provided that he has given not less than twenty-four hours' notice in writing of the appeal and of the grounds thereof to the local authority, and the court may make such order as they think just, including an order for the payment of costs (f). [405]

In addition to compliance with the requirements and conditions mentioned above, there must also be compliance with the requirements of the First Schedule to the Act (g), and the regulations of the Secretary of State with respect to the use on the premises of any cinematograph or other similar apparatus (h). [406]

The First Schedule contains detailed provisions for ensuring safety in stores and premises where raw celluloid or cinematograph film is kept.

Raw celluloid must be kept or stored in fire-resisting storerooms and subject to the regulations applying to such storerooms (i). Cinematograph film must be kept in fire-resisting storerooms or in

(s) See *ante*, p. 168.

(u) S. 4 (3); 13 Statutes 980.

(b) S. 1 (1) (b); 13 Statutes 977.

(d) S. 1 (1) (d).

(e) S. 1 (1) (e) (i.), (ii.).

(f) S. 1 (3). The appeal should be made by way of complaint for an order, see S.J. Rule, 1915, No. 58. The hearing need not be within the seven days, provided the complaint be made in time.

(g) S. 1 (1) (f); 13 Statutes 978, 981. Part I. relates to raw celluloid stores, Part II. to premises where cinematograph film is kept or stored, Part III. to fire-resisting storerooms.

(h) S. 1 (1) (g); 13 Statutes 978; S.R. & O., 1924, No. 403.

(i) Sched. I., Parts I., III.; 13 Statutes 981, 982.

(t) S. 1 (1) (a); 13 Statutes 977.

(a) S.R. & O., 1922, No. 1076.

(c) S. 1 (1) (c).

fire-resisting receptacles not used for any other purpose and plainly marked "Film." Every room used for the storage, examination, cleaning, packing, rewinding or repair of film should be used for no other purpose and must be kept properly ventilated (*k*).

In the case of cinematograph film, every reel must be kept in a separate and properly closed metal box and not more than ten reels or forty pounds of film must be exposed at any one time. Every room used for storing, examining, cleaning, packing, rewinding or repairing films must comply with special requirements as to fire prevention and extinguishment of fire (*l*).

Fire resisting storerooms must be constructed, maintained and used in accordance with the regulations contained in Part III. of the First Schedule, and no storeroom must contain more than one ton of celluloid or cinematograph film or more than 560 reels of film (*m*).

The Secretary of State may by order modify or add to the regulations set out in the First Schedule (*n*), and may also make regulations with respect to the use upon any premises to which the Act applies of any cinematograph or other similar apparatus (*o*).

An order of the Secretary of State may apply generally or to such classes or descriptions of premises as are mentioned in the order (*p*).

Before the Secretary of State makes any such order, he must give public notice of his intention in the manner prescribed in the Second Schedule to the Act, and state where copies of the draft order may be obtained. He must state the time (which shall not be less than twenty-one days) within which objections to the draft order are to be made by persons affected. Objections must be in writing and in the form laid down in the Second Schedule. The Secretary of State must consider any objection sent to him within the required time. [407]

Where the majority of the occupiers of the premises affected dispute the reasonableness of the requirements of the draft order, and the Secretary of State does not amend or withdraw the draft, he must, before making the order, direct an inquiry to be held. He may also direct an inquiry to be held in regard to any objection though not made by the majority of the occupiers.

The procedure at the inquiry, which must be public, is set out in the Second Schedule to the Act. [408]

When the order is made it must, as soon as possible, be laid before both Houses of Parliament, and, if either House within the next forty days after the order has been laid before that House, resolve that all or any of the provisions ought to be annulled, the order after the date of the resolution is of no effect, without prejudice to the validity of anything done in the meantime thereunder (*q*).

In pursuance of his powers, the Secretary of State has by order made regulations which came into force on May 1, 1924, with respect to the use of cinematograph or similar apparatus upon any premises used for any purpose to which the Act applies (*r*).

(*k*) Sched. I., Parts II., III. ; 13 Statutes 981, 982.

(*l*) *Ibid.*, Part II., para. 4.

(*m*) *Ibid.*, Part III.

(*n*) S. 1 (4) (b) ; 13 Statutes 978. No order under this paragraph has been made.

(*o*) S. 1 (4) (a).

(*p*) S. 1 (4).

(*q*) Sched. II. ; 13 Statutes 983 ; S.R. & O., 1924, No. 403.

(*r*) S.R. & O., 1924, No. 403.

The regulations contain technical requirements as to the construction and fitting of projecting apparatus and the precautions which must be taken in their use. [409]

Precautions Recommended.—It is recognised that there is danger of serious fire occurring in stores where large quantities of celluloid film are kept. This is due to the tendency of the material of which the film is made to slow carbonisation which may be brought about by a very slight increase in temperature. The danger can be considerably diminished by suitable arrangements for the storage of the receptacles containing the films, and by the installation of adequate fire extinguishing and ventilating systems.

Films should preferably be stored in unoccupied premises, but where this is not possible storage should be on the roof or top floor of the building. If, however, the stores are in the basement, local authorities are advised to see that the following additional precautions are observed.

Each separate storeroom or vault should be provided with independent ventilation. Ventilation to the outer air by means of one common duct connected to each vault by means of short branch ducts is undesirable and may magnify the severity of an outbreak of fire by allowing the flames to pass from one vault to another. If independent ventilation to the outer air is impossible, it should be to a common chamber ventilated direct to the open air. Ducts to the open air should not discharge in proximity to exits, ventilators or windows of premises.

Where large quantities of film are stored experience has shown that water is the best agency for fire extinguishment, and, as the slightest delay would mean that an outbreak would get quite out of hand, an automatic water sprinkling system should be installed. (See No. 7 of the Manufacture of Cinematograph Film Regulations, S.R. & O., 1928, No. 82.)

A system of open drencher heads discharging, at the pressure normally available, not less than two gallons per minute per square foot of floor area may be regarded as satisfactory. The system should be controlled by a heat operated device placed close to the stored material and functioning at or below the temperature at which nitro-cellulose will decompose (*i.e.* about 90° C.) and fitted with the usual sprinkler alarm gong.

As the emission of smoke or poisonous fumes from a basement may interfere seriously with the escape of persons occupying the rest of the building, self-closing smoke doors opening outwards should be provided both near the bottom and at the top of any stair or passage leading from a chamber in which film is stored. All vertical openings communicating with upper floors, such as elevators, shafts, wall cavities, ventilators, hatch-ways, heating and lighting ducts and common chimney flues, should be stopped. Windows should be of wired glass in metal frames and should be kept closed. [410]

Enforcement of the Act.—It is the duty of local authorities to see that the provisions of the Act are duly complied with (*s*).

Infringement of the provisions contained in sect. 1 of the Act renders the occupier of the premises concerned liable, on summary conviction, to a fine not exceeding £50, and, in the case of a continuing offence,

to a fine not exceeding £10 for each day during which the offence continues after conviction (*t*).

In the event of the contravention by any person employed on the premises of any regulation in the First Schedule or any regulation made under the Act, he is liable, on summary conviction, to a fine not exceeding £5 (*u*).

The provision in sect. 141 of the Factory and Workshop Act, 1901 (*w*), which enables an occupier to exempt himself from a fine on conviction of the actual offender, is incorporated in the Act (*a*).

The Act empowers duly authorised officers of local authorities at all reasonable times to enter and inspect premises used or suspected of being used, either wholly or in part, for any purpose to which the Act applies. If required, such officers must produce to the occupier a certificate of authorisation from the local authority (*b*).

Any duly authorised officer of a local authority may take for analysis samples of any material which he suspects to be or to contain celluloid (*c*).

Persons refusing to permit such officers to enter or inspect any premises, or to take samples, or obstructing them in the execution of their duty under the Act, are liable, on summary conviction, to a fine not exceeding £20 (*d*).

On the application of any occupier of premises who is prevented by agreement from effecting structural alterations necessary to enable him to comply with the Act, or who claims that the whole part of the expenses of the alterations should be borne by the owner, the county court may make such order setting aside or modifying the terms of the agreement, or concerning the expenses or their apportionment as the court considers just and equitable in the circumstances (*e*).

As an alternative, the court may, in the case of an application for an order concerning expenses or their apportionment, determine the lease if the occupier so requests (*e*). [411]

London.—In the county of London licences under the Cinematograph Act, 1909 (*f*), are granted by the L.C.C., except where the premises are licensed by the Lord Chamberlain, when the licence is issued by him (*g*).

The L.C.C. has power, under sect. 16 of the L.C.C. (General Powers) Act, 1923 (*h*), to vary the conditions of any licence granted by them on the application of the licensee, and, under sect. 29 of the L.C.C. (General Powers) Act, 1924 (*i*), to suspend the use of any premises licensed by them if unsafe by reason of serious risk of fire or danger to life, owing to the failure of the licensee to observe the rules, regulations or conditions applying to the premises.

As to the meaning in London of "police area" and "chief officer of police" in the Cinematograph Act, 1909, see note (*q*) on p. 159, *ante*.

The Celluloid and Cinematograph Film Act, 1922, does not apply to the administrative county of London (*i*). Similar provisions are,

(*t*) S. 3 (1); 13 Statutes 979.

(*u*) 8 Statutes 590.

(*b*) S. 5 (1), (2).

(*d*) S. 7.

(*f*) See *ante*, p. 161.

(*g*) Cinematograph Act, 1909, s. 7 (1); 19 Statutes 354.

(*h*) 19 Statutes 857.

(*i*) S. 11 (2); 18 Statutes 981.

(*u*) S. 3 (2).

(*a*) S. 3 (3); 13 Statutes 979.

(*c*) S. 6.

(*e*) S. 8 (1), (2); 13 Statutes 980.

however, contained in the L.C.C. (Celluloid, etc.) Act, 1915 (*k*). That Act, like the Act of 1922, is designed to ensure safety in premises where celluloid or cinematograph film is stored or manufactured. It also contains a provision (*l*) imposing a penalty on any person selling cinematograph film to children or young persons under the age of sixteen years except on the written order of a responsible person.

[412]

(*k*) 13 Statutes 1196.

(*l*) S. 24; 13 Statutes 1208.

CINQUE PORTS AND THEIR LIBERTIES

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Preliminary.—From not later than the end of the twelfth century the Cinque Ports have consisted of the five original ports—Hastings, Sandwich, Dover, Romney and Hythe, together with the two “ancient towns” Rye and Winchelsea. To these seven principal ports were attached:

- (1) other corporate towns, known as corporate members or limbs;
- (2) smaller villis or hamlets known as non-corporate members or limbs.

Of these, the corporate limbs alone enjoyed practically the same privileges as their parent ports.

At the present time, these corporate members are represented by the following towns: Deal and Ramsgate (limbs of Sandwich), Faversham, Folkestone and Margate (limbs of Dover), Lydd (limb of Romney), Tenterden (limb of Rye).

Later references to the Cinque Ports in this article will consequently include all the towns above mentioned. The five original ports with the two ancient towns will be referred to as the head ports, and the expression “liberties” will be used throughout in its early sense as denoting the districts over which the various head ports claimed jurisdiction and in which the privileges of the ports were enjoyed, *i.e.* the total areas of the head ports themselves, and their corporate or non-corporate members wherever situate. [413]

Effect of the Municipal Corpns. Acts.—The head ports have long lost most of the special rights and privileges which in time past they were entitled to exercise within their own boundaries and in their limbs and liberties. Since the passing of the Municipal Corpns. Acts,

1835 and 1882, they have been in practically the same position as other municipal boroughs, with the following exceptions: [414]

1. There is still a municipal corp'n. for Winchelsea, but Winchelsea is not a borough to which either the Municipal Corpns. Act, 1882, or the L.G.A., 1933, applies, and is not one of the boroughs in East Sussex mentioned in Part III. of the First Schedule to the Act of 1933 (a).

For many years the town formed part of the Rye rural district, but that rural district was abolished on April 1, 1934, by the East Sussex Review Order, 1934, of the M. of H., and Winchelsea was included in the new Battle rural district.

Sect. 14 of the Municipal Corpns. Act, 1883 (b), provides that in the event of a charter not being granted to Winchelsea, the property of the corp'n. of Winchelsea should continue to be held, managed and enjoyed in like manner as if a scheme of the Charity Commissioners had provided accordingly, and the corp'n. continues undissolved as if it had been constituted under such a scheme. The section continues that "notwithstanding anything in this Act, Winchelsea shall continue to be entitled an ancient town of the Cinque Ports."

The mayor is elected annually on Easter Monday by the Jurats and Freemen, and other town officials are appointed, but no judicial or administrative functions are exercised by the corp'n.

For judicial purposes, the town is part of the county petty sessional division in which it is situated. [415]

2. Under sect. 248 (5) of the Municipal Corpns. Act, 1882 (c), the head ports (with the exception of Romney and Winchelsea), have power reserved to them to levy on their non-corporate members and liberties, and such corporate members as have not a separate court of quarter sessions, a rate (known as a liberty rate), in respect of the expenses of the head ports, to the payment whereof rates in the nature of county rates are applicable. The rate has to be allowed by the recorder in quarter sessions.

These powers are exercised by Sandwich over Ramsgate, Walmer and Sarre; by Dover over the parishes of Acol, Birchington, Garlinge, Ringwould, St. Peter and Westgate-on-Sea; and by Hastings over their limbs and liberties of Pevensy Sluice (Bexhill) and St. Leonards (Winchelsea). [416]

Administration of Justice and Licensing.—Magistrates in those of the head ports which are boroughs are in the same position as other borough justices except:

1. The justices of the quarter sessions borough of Sandwich still exercise full jurisdiction over the parish of Sarre, one of their ancient non-corporate members. [417]
2. By sect. 248 (4) of the Municipal Corpns. Act, 1882 (d), in addition to their usual and ordinary licensing powers the justices of the head ports (except Romney and Winchelsea) have had preserved to them the right of exercising jurisdiction in licensing matters in the liberties of their boroughs.

(a) 26 Statutes 473.

(c) *Ibid.*, 655.

(b) 10 Statutes 679.

(d) *Ibid.*

In practice, the extent to which the licensing powers of justices of the head ports (other than Romney and Winchelsea) are exercised in the liberties of their respective ports is inconsiderable, since in the course of time not only have parts of the ancient liberties in many cases become absorbed in the boroughs, but many of the non-corporate members have either lost their identity or ceased to exist. The Sandwich justices, however, still exercise licensing jurisdiction in the parishes of Walmer and Sarre; the Dover justices in the parishes of Acol, Birchington, Garlinge, Ringwould, St. Peter and Westgate-on-Sea; and the Hastings justices in the hamlet of Grange-next-Gillingham in Kent, and over the liberty of Pevensey Sluice (Bexhill). [418]

3. Sect. 2 (5) of the Licensing (Consolidation) Act, 1910 (*e*), confirms the ancient rights of the justices of all the head ports in licensing matters in their ancient liberties in the following terms :

“The justices of the county shall not have any power or authority as licensing justices in any of the principal Cinque Ports or in the two ancient towns, and in those ports and towns the justices of the port or town shall be the licensing justices, and the corporate and non-corporate members and liberties of any of those ports or towns, not being within the limits of a borough having a separate commission of the peace, shall be treated as part of the port or town.” [419]

4. By sect. 248 (2) of the Municipal Corpnns. Act, 1882 (*f*), the jurisdiction of the courts of quarter sessions, recorders and clerks of the peace of such of the head ports as are quarter sessions boroughs extends to the non-corporate members and liberties of those boroughs and to such corporate members as have no separate court of quarter sessions. Householders from those members and liberties may be summoned to serve as jurors under sub-sect. (6) of the section. [420]
5. By sects. 5 to 9 of the Cinque Ports Act, 1811 (*g*), in Brightlingsea (Essex) (a member of Sandwich), and in Bekesbourne and Grange (Kent) (non-corporate members of Hastings), county justices and coroners of Essex and Kent are authorised to act as if these liberties were part of their respective counties. [421]

Special Cinque Port Justices.—By sect. 1 of the Cinque Ports Act, 1811 (*h*), power is given to the Crown to issue commissions for the constitution of justices of the peace within and throughout the liberties of the Cinque Ports.

These magistrates, known as justices of the Cinque Ports, selected by a special advisory committee, and appointed under this special commission, exercise jurisdiction in certain non-corporate liberties, but are distinct from both borough and county magistrates in that they are specially precluded from exercising any jurisdiction in licensing matters. They are sworn in at Dover quarter sessions and appointed to act for the following areas, in which county justices have accordingly no jurisdiction :

(*e*) 9 Statutes 987.
(*g*) 4 Statutes 13, 14.

(*f*) 10 Statutes 655.
(*h*) *Ibid.*, 11.

- (a) *Thanet Petty Sessional Division of the Liberties of the Cinque Ports*: The parishes of Acol, Birchington, Garlinge, St. Peter and Westgate-on-Sea.
- (b) *Deal Petty Sessional Division of the Liberties of the Cinque Ports*: The parishes of Ringwould and Walmer. [422]

Coroners.—The combined effect of sect. 171 of the Municipal Corpn. Act, 1882 (*i*), and sects. 38, 48 of the L.G.A., 1888 (*k*), is that such of the head ports as are boroughs having a separate court of quarter sessions and a population of over 10,000 at the census of 1881, are entitled to appoint their own coroners; the coroners of those head ports exercise jurisdiction in the liberties of their respective ports, and the county coroner has no jurisdiction. The smaller boroughs are within the jurisdiction of the county coroner. [423]

Rights and Privileges of the Cinque Ports.—The former Chancery Court of the Cinque Ports has long ceased to exist. The Admiralty jurisdiction, however, still continues and was confirmed by sect. 13 of the Municipal Corpn. Act, 1888 (*l*); and, within its defined limits, is concurrent with and equal to that administered by the Admiralty Division of the High Court of Justice, but it is some time since any business was transacted in this court. The registry is situated at Dover. The court formerly sat in the St. James's (old) Church, Dover.

From the time of Richard I., if not earlier, the Cinque Ports have been entitled to be summoned and to send representatives to the coronation of the Sovereign. For some time past it has been the practice for the mayors of the respective towns to be selected for this honour, together with the solicitors to the ports. On such occasions the sixteenth-century dress of the barons of the Cinque Ports is worn, and representatives attending are subsequently known as "coronation barons."

The mayors of the head ports have the right to be addressed as "The Right Worshipful."

Each year, in rotation, the mayor of one of the seven head ports holds the position of "Speaker of the Ports," and as such can, if he thinks fit, summon the ports to their assembly known as "Brotherhood and Guestling," at which he presides *ex-officio*.

The Courts of Brotherhood and Guestling appoint the two solicitors of the ports, who usually hold office for life, and are responsible for the safe custody of the records of the ports. Business transacted is mainly formal and confined to matters of common interest to the members of the confederation. [424]

Office of the Lord Warden.—This appointment, which is made by the Crown, is purely honorary and no longer carries with it any judicial or administrative powers, and there remain but few of the privileges formerly attached to it.

The holder in former days held a dual position, as a Minister of the Crown, through whom the Royal Commands to the barons of the ports were conveyed, and also as the representative of the confederation pledged by the oath taken at his installation to maintain all the franchises, liberties, customs and usages of the Five Ports.

The appointment includes the offices of Constable of Dover Castle and Admiral of the Cinque Ports, and carries with it the right of residence

(i) 10 Statutes 632.

(k) *Ibid.*, 716, 726.

(l) *Ibid.*, 679.

at Walmer Castle, of flying a distinctive flag, and of precedence next to Royalty in any of the Cinque Ports or their liberties.

The Lord Warden appoints the Judge Advocate of the Admiralty Court of the Cinque Ports and a chaplain, and still exercises his right of summoning and presiding at the Court of Shepway (the oldest court of justice for the confederation) for the purpose of his installation in office, but he now makes a declaration instead of taking an oath to maintain the franchises, etc., of the ports. [425]

The Cinque Ports Acts, 1811 to 1872.—This collective short title was assigned by the Second Schedule to the Short Titles Act, 1896 (*m*), to a group of Acts consisting of the Cinque Ports Acts, 1811, 1821, 1828, 1855, 1857 and 1869, together with the Pilotage Law Amendment Act, 1853, and the Merchant Shipping Act, 1872. The two Acts last mentioned related to the abolition of Cinque Port pilots and are printed in 18 Statutes 89, 144. The other Cinque Ports Acts will be found in 4 Statutes under the head of "Courts." Most of the provisions which have not been referred to in this article relate to salvage and the jurisdiction of the Admiralty Court of the Cinque Ports. [426]

(*m*) See 18 Statutes 1151.

CITIES, CREATION OF

See CREATION OF CITIES.

CITY ALDERMAN

See ALDERMAN.

CITY ENGINEER AND SURVEYOR

See BOROUGH ENGINEER AND SURVEYOR.

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CITY OF LONDON

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Preliminary Observations.—The City of London is unique among the municipalities of Great Britain both as regards its constitution and the powers and duties of its governing bodies. The commonalty seem originally to have been recognised as a corporation by prescription. In fact, when the lawyers of the fourteenth century first attempted a legal definition of a corporation, they cited the ancient unity of the city to illustrate their meaning (a). The Act of 1690, which annulled the legal decision obtained by Charles II. in 1690 making the privileges of the city subject to forfeiture, declared that the mayor and commonalty and citizens of the city should "continue and be and prescribe to be a body corporate and politic *in re facto et nomine*" (b). [427]

(a) Liber assisarum, 62, 19 Edw. 3: "La cominalty de Londres qe est perpetuel et d'antiquity."

(b) Stat. (1690), 2 Wm. & M., c. 8.

The constitution of the city is the result of development under powers conferred by divers charters, among which that of 15 Edw. 3 (1341), specifically granted to the mayor, aldermen and commonalty the power of altering their customs in accordance with reason and good faith (c). Parliament has made no attempt to deal with the constitution of the city, though the Act for Regulating Elections (1724) (d), and subsequent amending Acts promoted by the corporation, have had the effect of making statutory, and thus alterable only by statute, the institutions therein mentioned. But the corporation was left untouched by the Municipal Corporations Act of 1835 (e), and by other and later general statutes dealing with municipal boroughs. [428]

The powers and duties of the corporation for the most part came into existence as that body developed a sense of responsibility for the well-being of the community. The earliest documentary evidence (f) shows that in the thirteenth and fourteenth centuries the city authorities were busy with the administration of justice, maintenance of public order, building regulations, water supply, cleansing of the streets, sanitation, prevention of pollution of the Thames, measures against fire, and the control of markets, trade, industry and shipping. These services, few in the early centuries, were of slow growth until the nineteenth century. By that time the extension of London and the chaotic condition of affairs outside the city "square mile" had shown the need of legislation to co-ordinate the services of the Metropolis. Meanwhile Parliament and Government departments had begun to devote an increasing amount of attention to local administration. The result has been, firstly, that the principal activities of the corporation, resting on custom and charter, have been confirmed, regulated and extended by the legislature, which is continually creating new duties and powers; and secondly, that certain general services (g), which could not be conveniently administered by the corporation and other London authorities working separately, were entrusted to the Metropolitan Board of Works, the London School Board and the Metropolitan Asylums Board, all of whom were sooner or later superseded by the L.C.C. [429]

Citizens and the Electoral Bodies.—The corporation consists of the "mayor, aldermen, commonalty and citizens" (h), though corporate actions are actually performed only by the governing bodies, and it is now usual for the Common Council to be named as the local authority in Acts of Parliament (i). The "citizens" are not synonymous with the inhabitants or occupiers, but consist of the freemen who have acquired their status by apprenticeship, patrimony and redemption (k). Prior to 1835, the freedom could only be obtained, as it is still largely obtained to-day, through one of the Livery Companies. In that year

(c) *Munimenta Gildhallæ Londoniensis* (Rolls Series), 1860, II., Part II., pp. 438—444.

(d) Stat. (1724), 11 Geo. 1, c. 18.

(e) Stat. (1835), 5 & 6 Wm. 4, c. 76.

(f) Brit. Mus. Add. MS. 14, 252; Lib. de Ant. Leg. (Camden Soc., 1846); Cals. of Letter Books, Early Mayor's Court Rolls, and Plea and Memoranda Rolls (published by corporation, 1899—1932).

(g) Elementary and higher education, main drainage, fire brigades, etc.

(h) Charter of October 18, 14 Car. I. (1638); Stat. (1690), 2 Wm. & M. c. 8.

(i) Standing Order of Common Council, No. 130, instructs the City Remembrancer to this effect; City of London (Union of Parishes) Act, 1907, s. 11; 14 Statutes 603, constituted the Common Council overseers of parish of City of London.

(k) A. H. Thomas, Cal. of Plea and Mem. Rolls, 1364—81, pp. xxvii *et seq.*

the intervention of a company was declared to be no longer necessary (*l*). Originally all elective power resided with the freemen, but the voting franchise, in the case of aldermen and common councilmen, is now much extended. The electoral bodies are :

The Common Hall, consisting originally of all freemen, then later of a large representation from each ward, and finally of such freemen of the companies as are entitled to the "livery" of their companies (*m*). This body elects the sheriffs, chamberlain and other officers on June 24, and the Lord Mayor on September 29 each year (*n*).

The Wardmote, meeting in the several wards on St. Thomas's Day (December 21) for the election of common councilmen and ward officers. The electors must be £10 occupiers, or persons on the Parliamentary register, or persons who would have been entitled to be on the register but for non-residence (*o*). Wardmotes for the election of aldermen, who hold office for life, take place, on a precept of the Lord Mayor, within fourteen days of the death or the acceptance of the resignation of an alderman and are subject to the same regulations as other ward elections (*p*). [430]

The Lord Mayor, whose office is first mentioned in April 1193 (*q*), bears the courtesy titles of "Lord" (*r*) and "Right Honourable" (*s*), which date respectively from the early fifteenth and sixteenth centuries.

The Livery on September 29 returns two candidates out of such aldermen as have already served the office of sheriff (*t*), and of these the Court of Aldermen selects one. The two senior aldermen are usually nominated, but the Livery occasionally exercises the power of choosing other qualified aldermen. The Lord Mayor elect is presented to the Lord Chancellor for the approval of the Sovereign, and is admitted to his office on November 9, before the Judges of the High Court acting for the Sovereign (*u*). In the city he takes precedence of every subject of the realm including Princes of the Blood Royal. He is escheator for the city (*a*), and enjoys many dignities and marks of distinction peculiar to his office.

On the administrative side the Lord Mayor summons and presides over the Courts of Aldermen and Common Council and the Common Hall. They cannot be held but by his permission and direction, and the business to be placed on the summons and discussed is entirely under his control. Nor can his presence be dispensed with, save by the appointment, in writing under his hand and seal, of a *locum tenens*, who

(*l*) Resolution of Common Council, March 17, 1835.

(*m*) R. R. Sharpe, *Cal. of Letter Book H*, p. 251 (1384); *L.*, p. 73 (Act of Common Council, 1467); *L.*, p. 132 (Act of Common Council, 1475); Stat. (1724), 11 Geo. 1, c. 18, s. 14.

(*n*) Charters of July 5, 1199, and May 9, 1215; see as to polls, Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 35 (7); 7 Statutes 529.

(*o*) Stat. (1867), 30 & 31 Vict. c. i., ss. 2—5.

(*p*) Stat. (1849), 12 & 13 Vict. c. xciv., s. 5; City of London Ballot Act, 1887, ss. 2—6; Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 21; 7 Statutes 519; City of London (Various Powers) Act, 1900, s. 59; Acts of Common Council, January 25, 1831, December 10, 1857, December 2, 1920.

(*q*) Roger de Hoveden (Rolls Series), III., p. 212.

(*r*) Plea & Mem. Rolls (1414), A 43, m.9 b.

(*s*) City Journal (1515), No. 11, fo. 208 b, 224 b.

(*t*) *Cal. of H.* (1884), p. 277.

(*u*) By charters of May 9, 1215, June 12, 1253, Stat. (1750), 24 Geo. 2, c. 48, s. 11; Stat. (1751), 25 Geo. 2, c. 30, s. 4; Supreme Court of Judicature (Consolidation) Act, 1925, s. 223; 4 Statutes 198.

(*a*) Charter of March 6, 1327, with consent of Parliament.

must be an alderman who has passed the chair. On the legal side, the Lord Mayor is Chief Magistrate, being the first named in the Commissions of Oyer and Terminer and Gaol Delivery at the Central Criminal Court (*b*). His minor jurisdiction as a justice of the peace is exercised at the Mansion House, where the justice room for the south part of the city is located. [431]

The Sheriffs.—Closely associated with the Lord Mayor in his public and charitable activities are the two sheriffs, whose office is of greater antiquity than any other in the city. The “wic-reeve” and “reeves” of London, exercising the king’s authority over the citizens, are mentioned in Anglo-Saxon laws as early as the seventh century (*c*). Shortly before the Norman Conquest the grouping of Middlesex with London for financial and legal purposes had taken place, and the same persons are found acting both as sheriffs or shire-reeves of Middlesex and portreeves of London (*d*). About 1182 the citizens were granted the right of holding London and Middlesex to farm for £300 and of appointing their own sheriffs (*e*), a right which became fully operative by the charter of 1199 (*f*). Henceforward the two sheriffs exercised jointly the shrievalties of London and Middlesex, until Middlesex was withdrawn from their scope by the L.G.A. of 1888 (*g*). The reduction and commutation of the fee-farm followed, by arrangement with the Treasury, and the corporation now possesses the entire estate and interest in the office of Sheriff for the City of London with the fees and emoluments.

The sheriffs are elected on June 24 every year out of persons nominated by the Lord Mayor and the Livery. In addition to persons thus nominated, every alderman who has not served the office of sheriff is, according to his seniority, in nomination and priority to any other person (*h*). As servants of the Crown, the city sheriffs perform ordinary shrieval duties, but they have also many civic responsibilities. Attended by the Remembrancer, they are required to wait on the Sovereign to ascertain his will as to the reception of addresses; they present petitions at the Bar of the House of Commons on behalf of the corporation; they are required to attend every session of the Central Criminal Court; they conduct the business in Common Hall in the absence of the Lord Mayor; and places are reserved for them in the Courts of Aldermen and Common Council. Their most exacting duties, however, are of a charitable and public nature, and entail their attendance with the Lord Mayor at numerous public functions in support of charitable, educational and other causes. They receive an allowance of £740 charged with the payment of a fee-farm and make their own arrangements with their under-sheriffs. But the expenses of the shrievalty have always been many times in excess of this sum. [432]

The Court of Aldermen, which developed from the administrative side of the pre-Conquest court of the city, the Husting, carried out the

(*b*) Central Criminal Court Act, 1834, s. 1; 4 Statutes 31.

(*c*) Liebermann, *Gesetze der Angelsachsen* I., p. 11, s. 16.

(*d*) *Codex Diplomaticus*, IV., 843, 872; Round, *Geoffrey de Mandeville*, 347.

(*e*) *Inspeximus* of May 25, 1400.

(*f*) Charter, July 5, 1 John (1199).

(*g*) L.G.A., 1888, s. 41 (8); 10 Statutes 721.

(*h*) Act of Common Council, January 21, 1932, consolidating law relating to nomination and election of sheriffs of the City of London.

main functions of civic government from the thirteenth to the seventeenth centuries. It consists of the Lord Mayor and 25 other aldermen, representing the wards, whose election must be approved by the court itself. If the court refuses to accept a person elected, and the ward persists, then the court, after three rejections, may proceed to fill the vacancy by a fit and proper nominee of its own (*i*). An alderman may be removed for reasonable cause (*k*), such as bankruptcy, neglect of duty, conviction for fraud and other crimes, the duty of adjudicating on such causes devolving on the court itself (*l*). The court also has the exclusive cognisance and examination of elections of persons into the common council (*m*).

Among matters of administration reserved to the Court of Aldermen are the control of the Livery Companies, the recognition of new Livery Companies and admissions to the freedom through the companies (*n*), the admission of special constables and the approval of rules and regulations under the City of London Police Act, 1839 (*o*), the Metropolitan Streets Act, 1867 (*p*), and the City of London (Street Traffic) Act, 1909. In connection with its duties the Court of Aldermen is entitled to order payments out of City Cash. The main activities of the aldermen, however, arise out of their position as justices of Oyer and Terminer and Gaol Delivery at the Central Criminal Court (*q*), and as justices of the peace (*r*) in quarter sessions and in petty sessions at the Guildhall justice room. In the latter capacity they are entitled to do alone anything by any statute directed to be done by more than one justice (*s*). [433]

The Court of Common Council, like the Court of Aldermen, had its origin in the Court of Husting, which was a deliberative as well as a legal assembly (*t*). The oath of the Commune of London in 1193 gives evidence of decisions by a body of *probi homines*, or reputable men, which the citizens as a whole were expected to observe (*u*), and other references of A.D. 1200—1 (*x*) and 1205—6 (*y*) must be interpreted as relating to committees of that body. Throughout the thirteenth century there are many signs that the aldermen were aided in their government of the city by the counsel of selected representatives of the citizens. About 1285 or 1286 occurs a first list of names of *probi homines* "of all the wards sworn to consult with the aldermen on common affairs of the City of London (*z*)."¹ Such lists become more frequent in the next century, during which successive enactments of

(*i*) *R. v. Johnson* (1839), 6 Cl. & Fin. 41; 34 Digest 594, 143; *Scales v. Key* (1840), 11 A. & E. 819; 34 Digest 594, 144.

(*k*) Stat. (1894), 17 Ric. II., c. 11.

(*l*) Stat. (1849), 12 & 13 Vict. c. xciv., s. 9.

(*m*) *Bolton v. Jeffes* (1718), 2 Brown's Parl. Cases, 463.

(*n*) 2 Rep. Munic. Corp. 1837, p. 67.

(*o*) S. 14.

(*p*) S. 11; 19 Statutes 157.

(*q*) Stat. (1834), 4 & 5 Wm. 4, c. 36; 4 Statutes 31.

(*r*) All aldermen act *ex officio* as justices of the peace by charter of August 23, 1741.

(*s*) Stat. (1601), 43 Eliz. c. 2, s. 7; Summary Jurisdiction Acts, 1848, s. 34; 11 Statutes 290; and 1879, s. 20 (10); 11 Statutes 332; City of London (Union of Parishes) Act, 1907, s. 24; 14 Statutes 609.

(*t*) Chron. Jocelini de Brakelonda (Camd. Soc., 1840), pp. 55—6.

(*u*) Brit. Mus. Add. MS., 14,252, f. 112 v—118 r; Round, Commune of London, p. 235.

(*x*) Liber de Antiquis Legibus (Camd. Soc., 1846), p. 2.

(*y*) Rot. Litt. Claus. I., p. 64a.

(*z*) R. R. Sharpe, Cal. of Letter Book A., pp. xi., 209.

the commonalty placed the Common Council on a regular and permanent footing (*a*). As regards constitution, the Common Council has altered little since 1384.

The council now consists of the Lord Mayor, 25 aldermen and 206 common councilmen. Its functions were originally consultative, but before the end of the fourteenth century it had become the legislative assembly, whose consent was necessary in all matters concerning civic taxation and the lands and revenues of the corporation. It is now the main governing body, having retained its legislative power, and succeeded to the greater part of the executive and administrative powers formerly exercised by the Court of Aldermen. [434]

The City Officers.—At the head of the permanent staff are a number of officials known as the “high officers.” With the exception of the Commissioner of Police, they hold offices which can be traced far back into the past, and partly for this reason they enjoy formal precedence over other officers whose functions have become a part of municipal administration within more recent times. [435]

The Recorder is regarded as the principal officer of the corporation, being the senior law officer and representative of the Lord Mayor and aldermen in their judicial capacity. Geoffrey de Norton, alderman of Candlewick Ward, is recorded in 1298 as performing the duties later associated with the Recorder (*b*). Of his nine immediate successors six represented the above-named ward and all were aldermen (*c*). As they were advanced to the recordership very shortly after receiving their aldermanries, it is probable that they were professional lawyers and that they were at that period required to become aldermen before appointment. At the present day the Recorder, though not technically an alderman, is placed in the list of aldermen with precedence over all who have not served the office of lord mayor. He is elected for life by the Court of Aldermen, but since the L.G.A., 1888 (*d*), he cannot exercise judicial functions until appointed by the Sovereign so to do. His duties are as follows: to advise the Lord Mayor and aldermen in the administration of justice; to preside over the Court of Husting and the Mayor's and City of London Court on behalf of the Lord Mayor and sheriffs; to record the custom of London in the High Court by word of mouth; to attend the Lord Mayor on the presentation of addresses to the Sovereign; to present the Lord Mayor elect to the Lord Chancellor for the approval of the Sovereign, and to His Majesty's judges on his being sworn into office; to attend the Courts of Aldermen and Common Council; and to peruse and advise on bye-laws and parliamentary bills when required. He is by charter a justice of the peace of the City of London (*e*), and by virtue of his office one of the judges of the Central Criminal Court (*f*). He is also High Steward of Southwark and a commissioner or governor on various public bodies. The Recordership of London was for long regarded as a stepping-stone to high judicial promotion, numbering among its holders such legal luminaries as Fleetwood, Coke, Coventry, Littleton, Jefferies and King. [436]

(*a*) R. R. Sharpe, *Cal. of F.*, p. 162 (A.D. 1345); *Cal. of G.*, p. 3 (A.D. 1352); *Cal. of H.*, p. 38 (A.D. 1376); p. 227 (A.D. 1384).

(*b*) R. R. Sharpe, *Cal. of Letter Book B.*, p. 218.

(*c*) A. B. Beaven, *Aldermen of City of London*, I., pp. 80—81.

(*d*) S. 42 (14); 10 Statutes 723.

(*e*) Charter of November 9, 1462.

(*f*) Central Criminal Court Act, 1834, s. 1; 4 Statutes 31.

The Chamberlain also holds an office of great antiquity. Arnold Fitz Thedmar, to whom is ascribed the authorship of the *Liber de Antiquis Legibus*, is considered to have been Chamberlain, but the first person definitely described as such was Stephen de Mundene, A.D. 1276 (g). This officer must be carefully distinguished from the King's Chamberlain, who was also King's Butler and Coroner for the city in the thirteenth century (h). With one doubtful exception in 1300 (i), all the early Chamberlains were elected by the commonalty and continued to be so elected, in accordance with the regulations of Edward II. (k), until these elective functions devolved upon the Livery in Common Hall in the fifteenth century (l). The Chamberlain by ancient custom is treasurer of the city, and in that capacity has care of the moneys of the corporation called "City Cash," and of the several funds committed to the care of the corporation. He is also the officer responsible for the registration of freemen. As such he holds a court, already existing in 1299 and recently confirmed by statute (m), for determining differences between masters and apprentices. Prior to the eighteenth century, when the city customs of orphanage were still observed, the Chamberlain was custodian of the goods and moneys belonging to city orphans, for which purpose he was a corporation sole with a common seal. Details of the general business transacted in the Chamber, and particulars of the numerous accounts kept there, can be gathered from the published statements rendered annually to the corporation. [437]

The Town Clerk or common clerk, is mentioned in A.D. 1275 as "principal clerk of the city," the holder of the office being the notorious Ralph Crepyn, afterwards alderman and representative in Parliament (n). Hugh de Waltham, to whose industry we are indebted for much of the early history of the city, was acting in January 1311, and re-elected common clerk in November 1311, by the commonalty (o). This method of election was confirmed by the regulations of Edward II. (p), and ultimately devolved upon the Common Council.

The Town Clerk attends the Courts of Aldermen and Common Council, advises them on their procedure, conducts their business, and is responsible for the entry of their proceedings in the repertories and journals. He also attends in person or by deputy the several committees of these courts as minuting officer. He administers the oath or declaration of office to the Lord Mayor, aldermen, sheriffs and other corporate officers, advises concerning the laws, customs, liberties and privileges of the city, and is official keeper of the charters, muniments and records of the corporation, and generally speaking, is charged with the more important clerical, organising and advisory duties. [438]

The Common Serjeant holds an office which can be traced as far back as 1291 (q), when Thomas Juvenal was elected and sworn by the mayor

(g) R. R. Sharpe, *Cal. of Letter Book A.*, p. 7.

(h) *Cal. of Coroner's Rolls*, p. ix.; *Cal. of E.*, p. 166.

(i) *Cal. of C.*, pp. 64—5.

(k) Letters Patent of June 8, 1319, in Guildhall Records Office.

(l) *Cal. of L.*, pp. 73, 132.

(m) A. H. Thomas, *Cal. of Early Mayor's Court Rolls*, pp. 46—8; Stat. (1867), 30 & 31 Vict. c. 141, s. 24; and Employers and Workmen Act, 1875, s. 13; 11 Statutes 499.

(n) Hundred Rolls, I., 415; French Chronicle (Camden Soc., 1844), p. 19.

(o) *Cal. of B.*, p. 17; D., p. 275.

(p) See note (k), *supra*.

(q) R. R. Sharpe, *Cal. of Letter Book A.*, p. 123.

and aldermen. By the regulations of 1319 (r), it was laid down that the Common Serjeant should be chosen and removable by the commonalty of the city, a privilege which was exercised by the Common Council until it was transferred by the L.G.A. of 1888 to the Crown (s). The duty of fixing the salary and defining the duties still remains with the corporation. Until the middle of the sixteenth century the Common Serjeant was regarded as protector of the rights of the commonalty and frequently acted as public prosecutor and as best friend of apprentices, orphans and wards in the Mayor's Court and Court of Aldermen. In connection with orphanage he formerly held an office for the receipt of inventories and taking of recognisances, known as the Court of Orphans (t). At the present day he is a commissioner at the Central Criminal Court, his name having been included in Commissions of Oyer and Terminer and Gaol Delivery for more than two and a half centuries (u). He attends the court during the whole of the sittings and presides as one of the judges. He is also one of the judges of the Mayor's and City of London Court (a). He is a law officer of the corporation, has important duties at Common Hall, attends the Courts of Aldermen and Common Council, and represents the city at many public and ceremonial occasions. As in the case of the Recorder-ship the list of common serjeants contains many names afterwards famous in the annals of the law. [439]

The Judge of the Mayor's and City of London Court, though his title is of recent origin, represents several ancient jurisdictions. Before the amalgamation of 1921 (b) the Mayor's Court could be described as the High Court of the city, with no limit as to amount where the whole cause of action lay within the city. The City of London Court, so named in 1867, represented the ancient Sheriffs' Courts, presided over by two judges called "undersheriffs." In 1852 (c), the Sheriffs' Courts took over the work of an old city small debts court known as the Court of Requests, and became a single Sheriffs' Court. In 1867 (d), county court functions were conferred and the City of London Court, as it was now called, had the same jurisdiction as an ordinary county court, with certain added powers conferred by later statutes and Orders in Council (e). It had been provided by the L.G.A. of 1888 that the judge of the City of London Court should be appointed by the Crown (f), and in the Act of 1920, which amalgamated all these courts, it was laid down that one or two additional judges might be appointed by the Lord Chancellor (g).

The principal duties of the judge are as a commissioner at the Central Criminal Court, which duties he may be said to have inherited from the

(r) Letters Patent of June 8, 1319, in Guildhall Records Office.

(s) L.G.A., 1888, s. 42 (14); 10 Statutes 723.

(t) *Lex Londinensis*, 1680, p. 55.

(u) Commissions in Records Office; Central Criminal Court Act, 1834, s. 14 Statutes 31.

(a) Mayor's and City of London Court Act, 1920, s. 2 (1); 11 Statutes 625.

(b) *Ibid.*

(c) London (City) Small Debts Extension Act, 1852, repealing 10 & 11 Vict. c. lxxi., and 11 & 12 Vict. c. cliv.

(d) County Courts Act, 1867, ss. 3, 32, 35, 30 & 31 Vict. c. 142.

(e) For example, admiralty jurisdiction, and jurisdiction under the Companies (Winding-up) Act, 1890.

(f) L.G.A., 1888, s. 42 (14); 10 Statutes 723.

(g) Mayor's and City of London Court Act, 1920, s. 2; 11 Statutes 625.

undersheriffs of the compters (*h*). He also acts as a judge of the amalgamated court on the county court side, but would be available to take actions remitted from the High Court or, if required, to hear actions conducted according to the ancient Mayor's Court procedure, though the latter actions are invariably taken either by the Recorder or Common Serjeant. [440]

The Assistant Judge, on the other hand, derives his office from the Borough and Local Courts of Record Act, 1872 (*i*), which empowered the Recorder, if necessary, to appoint a deputy or assistant judge of the Mayor's Court. The Mayor's and City of London Court Act of 1920 provided that the assistant judge should continue in office as a judge of the amalgamated court and be deemed to be a county court judge (*k*), and it is in the latter capacity that he is mainly occupied. [441]

The Commissioner of the City Police is responsible for the efficiency of the Force and the maintenance of order in the city. His office was created by the City of London Police Act, 1839, which enabled the Common Council to appoint a fit person as commissioner, subject to the Sovereign's approval notified by a Secretary of State (*l*). In addition to the statutory duties enumerated in the Act, the commissioner has to enforce regulations made from time to time by the Home Secretary under the City of London Police Act, 1919 (*m*), and has certain ceremonial duties incident to his position. [442]

The Comptroller of the Chamber and the Bridge House Estates may be described briefly as the general steward and conveyancer of the corporation. Originally he was regarded as an assistant of the Chamberlain with the added duty of keeping separate rolls to check the accounts of the latter; hence his early titles of "Clerk of the Chamber" and "Contrarotulator." David de Cotesbroke was appointed under the latter title in 1311 (*n*), and appears to have had as predecessors Hugh de Waltham (1310) afterwards town clerk, and "John of the Chamber," first mentioned in 1294 (*o*). The Clerk of the Chamber during the fourteenth century acted as trustee for the corporation, a duty which he still performs. As Comptroller he submits to the Common Council yearly the abstract of the charge upon the Chamberlain of the rents and revenues of the City and Bridge House Estates. As Vice-chamberlain he admits persons to the freedom and presides in the Court of the Chamberlain in the latter's absence. He is a law officer, has entire charge of the conveyancing work and the custody of the title deeds of the corporation, compiles the rentals of the estates and markets, attends the Common Council and its committees and the Common Hall, and is one of the officers whose presence is required on occasions of public ceremony in the city. [443]

The Remembrancer, whose office was created in 1570, when Thomas Norton, the distinguished lawyer and poet, was appointed (*p*), was originally in charge of the inward and outward correspondence of the Lord Mayor and aldermen with the Sovereign, the Privy Council and important

(*h*) Central Criminal Court Act, 1834, s. 1; 4 Statutes 81.

(*i*) S. 7; 4 Statutes 118.

(*k*) S. 2 (2); 11 Statutes 625.

(*l*) City of London Police Act, 1839, s. 3.

(*m*) City of London Police Act, 1919.

(*n*) R. R. Sharpe, *Cal. of D.*, p. 79.

(*o*) *Cal. of B.*, pp. 57, 232.

(*p*) *City Repertory* 17, fols. 101b-102. See *Dictionary of National Biography*.

persons. The second Remembrancer, Dr. Giles Fletcher, also a notable Elizabethan literary man, was called the Lord Mayor's Secretary (*q*). An entry in the city's books in 1685 (*r*) shows that the Remembrancer had already for many years been attending Parliament and reporting all business transacted there affecting the city. This still remains the principal duty of the office, and the Remembrancer has the privilege of a seat under the gallery in the House of Commons. He has also many ceremonial duties connected with the privileges of the corporation and its relations with the Sovereign and Parliament, and with the arrangements for corporation hospitality on public occasions. [444]

The City Solicitor traces his office to an order of 1545 appointing "Robert Crystofer to have the solycyting of all maters concernyng the sutes of the Cytye" (*s*). He is appointed by the Common Council and required to conduct all proceedings in law and equity to which the corporation is a party, and to carry out such other legal business as may be ordered by the courts and committees. He acts in defence of city officers in proceedings against them for acts done by them in pursuance of their duties, and prosecutes for certain offences committed against the community, as well as in cases where delinquents might escape owing to the incapacity of the injured parties. [445]

Among the officers not designated as "high" are several of great importance.

The Secondary, who was second clerk of the sheriffs, immediately below the first clerks, or judges of the Sheriffs' Court, is first mentioned about 1324 (*t*). As undersheriff he performs what may be called the baillival duties of the shrievalty, and exercises functions as to the registration of electors under several statutes (*u*). He is also High Bailiff of Southwark. [446]

The M.O.H. is referred to later on; see *post*, p. 192.

The Coroner dates back to the twelfth century, and the office was attached to the King's Chamberlains, one of whom, Thomas Blunville, is mentioned in 1226 (*a*). The city purchased the right of appointing this officer in 1478 for the sum of £7,000 (*b*). The right of appointing the coroner for Southwark, conferred by charter of Edward VI. (*c*), was transferred to the L.C.C. in 1926 (*d*). The coroner of London performs very important duties under the City of London Fire Inquests Act of 1888 (*e*), which was promoted by the corporation for the better protection of city property. The practice of holding fire inquests has acted as a strong deterrent of frauds against insurance companies. [447]

Mention should also be made of the *Clerk of the Peace*, the *City Surveyor* (whose office is derived from the Sworn Masons and Carpenters of the fourteenth century), the *Engineer*, the *Sword Bearer* (A.D. 1426), *Common Cryer* and *Serjeant-at-Arms* (A.D. 1333), and the *City Marshal*

(*q*) Rep. 21, fos. 384—5; Journal 22, fo. 77. Cf. D. N. B.

(*r*) Rep. 90, fo. 142b, Rep. 91, fo. 4b.

(*s*) Rep. 11, fo. 152.

(*t*) Liber Custumarum (Rolls Series, 1860), p. 98.

(*u*) City of London Ballot Act, 1887; 50 & 51 Vict. c. xiii.; Representation of the People Act, 1918, s. 16 (2); 7 Statutes 559; City of London (Union of Parishes) Act, 1907, s. 11; 14 Statutes 603.

(*a*) Liber Albus (R. S.), p. 82.

(*b*) Charter of June 20, 1478, in Guildhall Records Office.

(*c*) Charter of April 23, 1550, in the same.

(*d*) Coroners (Amendment) Act, 1926, s. 4; 3 Statutes 781.

(*e*) Stat. (1888) 51 & 52 Vict. c. xxxviii.

(temp. Eliz.), the last three being ceremonial officers whose main duties are secretarial. [448]

THE MAIN FUNCTIONS OF CIVIC GOVERNMENT

As above mentioned, the L.C.C. under divers Acts has been entrusted with certain main services affecting the Metropolis as a whole. But the L.G.A., 1888, which created the L.C.C., recognised the then position of the city as a county within a county. Partly for this reason and partly for historical considerations, the city continues to perform or has been entrusted with certain duties, which outside the city fall within the province of the L.C.C. Of the more important services, such as elementary education, fire brigades, theatres and music halls, main drainage, supervision of public health, highways, bridges and street improvements, open spaces, housing, weights and measures and gas testing, only the first four are exercised by the L.C.C. within the city.

As regards finance, the corporation possesses landed property known as "City Lands" and the "Bridge House Estates" and has a further source of income in the profits of the markets. This income is expended for the benefit of the public, partly in accordance with statutory obligations undertaken by the corporation and partly in their discretion. The remaining services are charged upon the general rate. Nearly the whole of the poor rate is expended by the L.C.C., the larger portion thereof being devoted to the needs of greater London. [449]

City Cash Services include the upkeep of the Mansion House and other payments in connection with the maintenance of the Guildhall and the salaries of officers of the corporation. City Cash is also responsible for the following important and costly services. [450]

(a) *The Magistracy*, including the justice rooms and certain expenses under the provisions of the L.G.A., 1888, and the Probation of Offenders Act, 1907. [451]

(b) *The Central Criminal Court*.—The corporation out of City Cash pays the salaries of the Recorder and Common Serjeant as commissioners, makes a contribution for the services of the judge of the City of London Court as commissioner, and finds all salaries and expenses for the upkeep of the Session House. Provision was made in the Central Criminal Court Act of 1834 (f) for contributions by the counties of Middlesex, Essex and Surrey, to which was added the L.C.C. by the L.G.A. of 1888 (g). The L.C.C. now pays five-eighths of the salaries of certain officers of the court out of the county fund, to which the parish of the City of London contributes at present more than one-sixth. The service of the loan raised for the rebuilding of the Central Criminal Court is borne on the general rate of the city (h). [452]

(c) *The Purchase and Maintenance of Open Spaces*.—These comprise Epping Forest (1872—1920) (i), Burnham Beeches (1880) (k), Coulsdon Common (1883), West Wickham Common (1892), West Ham Park

(f) S. 20 ; 4 Statutes 37.

(g) L.G.A., 1888, s. 41 (5) ; 10 Statutes 721.

(h) City of London (Central Criminal Court House) Act, 1904, s. 3.

(i) Epping Forest Act, 1878, s. 3, 41 & 42 Vict. c. cccxiii.

(k) Corp'n. of London (Open Spaces) Act, 1878, 41 & 42 Vict. c. cxxvii.

(1874), and Bridgewater Square. The corporation has accepted the duty of maintaining Highgate Wood and Queen's Park, Kilburn, St. Paul's Churchyard and Bunhill Fields (*l*), and has made large contributions for the purchase of open spaces not under its own control. [453]

(d) *The City Schools*.—The City of London School owes its origin to a bequest to the corporation in 1442 by John Carpenter, the city's Common Clerk, of lands charged with an annual payment of £19 10s. for educational purposes. The school was opened in 1837 in Honeylane Market and transferred in 1882 to what is now the Thames Embankment (*m*). Between the years 1835 and 1921 the school had received nearly £600,000 from City Cash. The City of London Girls' School (1894), the Guildhall School of Music (1879) and the Freemen's School (1854) (*n*), are also supported from city revenues. [454]

(e) *The Bridges* have been built and maintained out of gifts and bequests of lands and moneys made from the end of the twelfth century onwards for the upkeep of London Bridge. The revenues are administered on behalf of the corporation by the Bridge House Committee and bridges have been constructed and maintained in accordance with several Acts of Parliament (*o*). [455]

(f) *The Markets*.—The market rights of the city are of great antiquity, the first schedule of tolls at Billingsgate being drawn up over 900 years ago. By charter of March 6, 1327, granted with the consent of Parliament, Edw. III. confirmed to the citizens exclusive market rights within seven miles from the city. This was confirmed by another charter in Parliament (November 26, 1383), and has been held to have the force of an Act of Parliament (*p*). In spite of this privilege, Covent Garden Market was granted by Charles II. to the 4th Earl of Bedford, and the same king granted to John Balch the right of holding a market at Spitalfields, since purchased by the corporation (*q*). The city has frequently defended its wholesale market rights, but raised no objection to the L.C.C. (Gen. Powers) Act, 1903, which gave to the Metropolitan boroughs power of providing places, buildings and shelters for the accommodation of street vendors. The city markets are as follows: Billingsgate, London Central Markets at Smithfield, the Metropolitan Cattle Market at Islington, the Leadenhall and Spitalfields Markets, the last named being charged, in case of deficit, on the general rate. [456]

(g) *The City Records*, by ancient custom, are in the custody of the Town Clerk, whose functions are performed by a qualified archivist as deputy keeper. The records, which are regarded as the most complete series of municipal documents in existence, cover the period from the Norman Conquest to the present day. The Records Office contains a

(*l*) Stat. (1867), 30 & 31 Vict. c. 38.

(*m*) Stat. (1834), 4 & 5 Wm. 4, c. xxxv., and City of London School Act, 1879, 42 & 43 Vict. c. lxxiii.

(*n*) Freemen's Orphan School Act, 1850; 13 & 14 Vict. c. xl.

(*o*) London Bridge Act, 1823, 4 Geo. 4, c. i.; Blackfriars Bridge Acts, 1755, 1863, 29 Geo. 2, c. lxxxvi., 26 Vict. c. lxii.; Southwark Bridge Transfer Acts, 1865, 1867, 28 & 29 Vict. c. cxcvi., 30 Vict. c. iii.; Tower Bridge Act, 1893.

(*p*) *Re Islington Market Bill* (1835), 3 Cl. & Fin. 513, at p. 518; 13 Digest 295, 263; *G.E.R. Co. v. Goldsmid* (1884), 9 App. Cas. 927, 931, 932, H. L.; 13 Digest 295, 264.

(*q*) City of London (Spitalfields Market) Act, 1902; Stepney Borough Council (Spitalfields Market) Act, 1912, 2 & 3 Geo. 5, c. xlix.; City of London (Various Powers) Acts, 1914, 1922.

research room for historical students and facilities are freely granted for consulting the muniments. [457]

(h) *Control of Finance*.—The corporation, although not under the same statutory obligation (r) as other councils in London to appoint a finance committee, assumed this obligation by resolution of July 3, 1930, the Coal, Corn and Finance Committee continuing to consider expenditure of City Cash and a new Rate Finance Committee being appointed to perform the same duties for the rates. [458]

Services Charged on the General Rate.—The City of London has two rates, a poor and a general rate, and these produce at present approximately one-seventh of the total rates of the administrative County of London, and about one forty-fifth of the total rates of the kingdom. Roughly two-thirds, comprising practically the whole of the *poor rate* less collection expenses and money expended under the Lunacy and Mental Deficiency Acts, is allocated to the L.C.C. under precepts made on the total rateable value irrespective of the vacancy of properties (s). The *general rate* is expended on city purposes as follows. [459]

(a) *The County Purposes Committee* administers a number of services which prior to the L.G.A., 1888, were carried out by the Court of Aldermen and quarter sessions (t). Other duties have arisen under legislation designating the Common Council as the local authority for the city. Generally speaking, the committee exercises powers in the city which the L.C.C. administers in the case of the Metropolitan boroughs. The more important duties are concerned with (i.) the nomination of the Visiting Committee of the City of London Mental Hospital (see *post*, p. 192); (ii.) the Gas Testing and Gas Examiners' Departments (u); (iii.) the Weights and Measures Department, carrying out the Weights and Measures Acts, within whose scope lie such matters as the sale of food and bread (a), coal and coke bye-laws for the city, and the inspection of liquid fuel and lubricating oil measuring instruments (b); (iv.) the Shop Hours Department (c).

The coroner's salary and expenses are paid out of the general rate in accordance with the Coroners (Amendment) Act, 1926 (d). The committee also enforces regulations under the Explosives Act, 1875, the Children and Young Persons Act, 1933, and the Education Act, 1921, in reference to the employment of children, and a number of other Acts constituting the Common Council as local authority. [460]

(b) *Police*.—The control of its own police force is one of the most cherished of city privileges. The force was not included in the Metropolitan Police Force modelled by Sir Robert Peel in 1829, but was constituted by the City of London Police Act, 1839 (e). Under that Act

(r) L.G.A., 1888, s. 80 (3); 10 Statutes 751; London Government Act, 1899, s. 8 (3); 11 Statutes 1230.

(s) Valuation (Metropolis) Act, 1869, s. 45; 14 Statutes 569.

(t) L.G.A., 1888, s. 41.

(u) Sale of Gas Act, 1859; 8 Statutes 1230 *et seq.*; Sale of Gas Act, 1860; 8 Statutes 1252 *et seq.*; Metropolis Gas Act, 1861; 8 Statutes 1253 *et seq.*; Gas Regulation Act, 1920; 8 Statutes 1278 *et seq.*; City of London (Various Powers) Act, 1914, and other Gas Acts.

(a) Sale of Food (Weights and Measures) Act, 1926; 20 Statutes 419 *et seq.*

(b) Measuring Instruments Regulations, 1929; S.R. & O., 1929, Nos. 183, 751.

(c) Under the Shops Acts, 1912—1928; 8 Statutes 613, 628, 647.

(d) S. 32; 8 Statutes 795.

(e) Stat. (1839), 2 & 3 Vict. c. xciv.

one-quarter of the expense was borne by City Cash, the remainder being raised by rates. In 1919, however, the charge was transferred to the general rate, and the Exchequer now contributes one-half of the total expenses less the product of a fourpenny rate (*f*). [461]

(c) *Port of London Sanitary Work*.—By the P.H.A., 1872 (*g*), the corporation was appointed sanitary authority of the Port of London, and the provision was repealed and reproduced in sect. 111 of the P.H. (London) Act, 1891 (*h*), when the area was defined as “the Port of London as established by the Customs Laws” (*i*). One-half of the approved net expenditure is now re-imbursed by Parliament, and by the City of London (Various Powers) Act, 1922, the proportion previously paid from city revenue was transferred to the general rate account. The authority maintains a hospital at Denton, inspects ships for plague, etc., under various regulations, disinfects vessels, and carries out other sanitary duties. [462]

(d) *The Mayor's and City of London Court*, created by the fusion of two courts in 1920 (*k*), was allocated to the general rate, in aid of which the considerable profits are devoted. (See *ante*, p. 185, “Judge of the Mayor's and City of London Court.”) [463]

(e) *The Library, Museum and Art Gallery* were similarly transferred by the adoption of the Public Libraries Acts in 1921, and *Spitalfields Market*, which may be expected to alleviate the rates in future years, was also transferred by the City of London (Various Powers) Act of 1922, which charged deficits, if any, after the payment of market expenses, upon the general rate, but not beyond a threepenny rate. [464]

(f) *Public Health Department*.—This department carries out many of the most important duties charged on the general rate. The sanitary powers of the corporation were consolidated by the Sewers Acts of 1848 and 1851 (*l*), which created the Commissioners of Sewers, appointed yearly by the Common Council. Under the Acts the commissioners were the rating authorities in the city. The corporation, on behalf of the commissioners, were authorised to borrow for artisans' dwellings under Acts of 1881 and 1892 (*m*). The commissioners became the Burial Board for the city under the Burial Act of 1852, and the Sanitary Authority under sect. 99 of the P.H. (London) Act, 1891, the Housing of the Working Classes Act, 1890, the Sale of Food and Drugs Acts, 1875 and 1879, and other Acts. In 1897 the City of London Sewers Act (*n*) dissolved the commissioners and transferred their powers to the Common Council. Since that date the Common Council have been named as the local authority in numerous Acts of Parliament. Their duties are delegated to the following committees: [465]

(1) *The Improvements Committee* deals with the widening and improving of the streets under Michael Angelo Taylor's Act (*o*), under which over four million pounds was spent in the seventy years between

(f) City of London Police Act, 1919, 9 & 10 Geo. 5, c. lxxiii.; and City of London (Various Powers) Act, 1920, s. 14.

(g) 35 & 36 Vict. c. 79, s. 20.

(h) S. 111; 11 Statutes 1086.

(i) As defined by Treasury Minute, August 1, 1883.

(k) Mayor's and City of London Court Act, 1920; 11 Statutes 625.

(l) Stat. (1848), 11 & 12 Vict. c. clxiii., and Stat. (1851), 14 & 15 Vict. c. xci.

(m) City of London Commissioners of Sewers (Artisans' Dwellings) Act, 1881, 44 & 45 Vict. c. lxxxix.; Corporation of London (Loans) Act, 1892, 55 & 56 Vict. c. lxxvii.

(n) Stat. (1897), 60 & 61 Vict. c. cxxxiii.

(o) The Metropolitan Paving Act, 1817; 11 Statutes 838.

1851 and 1921. It also carries out duties under the Housing, Town Planning, etc. Act, 1919 (*p*), in connection with dwellings built under that Act in Hercules Road and Old Kent Road, and other artisans' dwellings built under Housing Acts in Stoney Lane, and Windsor House, Bearsted and Dutton Houses, and is charged with the execution of the Town and Country Planning Act, 1932, sect. 2 of which constitutes the Common Council the local authority for the city. In one matter, which would naturally fall within the scope of this committee, the L.C.C. is the local authority, namely, the regulation of building under the London Building Act of 1930 (*q*), the enforcement of which in the city is for the most part entrusted to the L.C.C. The cost of street improvements is borne by loans raised for the purpose, though contributions are generally sought from the L.C.C. and the M. of T. [466]

(2) *The Streets Committee* undertakes the paving, cleansing, watering and lighting of the streets, the disposal of house and street refuse, the maintenance of subways, hydrants, fountains, underground conveniences and urinals, the licensing of hoards and scaffolds, and the care of Finsbury Circus Garden as an open space. The committee is also concerned with the upkeep of local sewers, under the City of London Sewers Acts (*r*), while the main sewers are under the management of the L.C.C. [467]

(3) *The Sanitary Committee*, under which the M.O.H. works, supervises all matters connected with public health and sanitation in the city under the P.H. (London) Act, 1891 (*s*), and is charged with the execution of a large number of Acts relating to adulteration of food, factories and workshops, nuisances, offensive trades, smoke and atmospheric pollution, premises of outworkers, lodging houses, hairdressers, infectious diseases, meat, maternity and child welfare, vaccination, rat repression and other matters. The medical officer's staff includes a veterinary surgeon. A proportion of the salaries of the M.O.H. and the sanitary inspectors is paid by a block grant made from Government funds.

Further activities of the committee include the upkeep of the cemetery and crematorium at Ilford, a tuberculosis dispensary at St. Bartholomew's Hospital, a treatment centre for venereal diseases (now transferred from Golden Lane to St. Bartholomew's Hospital), and the administration of schemes for dealing with insanitary areas in the city under the Housing Acts, 1925 and 1930, under which three blocks of buildings, Windsor House, Bearsted House and Dutton House, have been erected (*t*). See also "Improvements Committee," *ante*, p. 191. [468]

Services Charged upon the Poor Rate.—The L.C.C. is now the poor law authority for the Metropolis (*u*), and, as above mentioned, receives almost the whole of the poor rate levied in the city. The following important activity of the city corporation is, however, to a limited degree supported by the poor rate.

The City of London Mental Hospital, erected under the provisions of the Lunatic Asylums Act, 1853 (*a*), was maintained from City Cash until 1898. For the purposes of the Lunacy Act, 1890, the Common

(*p*) 13 Statutes 956.

(*q*) 23 Statutes 213.

(*r*) See preceding note (*l*).

(*s*) P.H. (London) Act, 1891; 11 Statutes 1025 *et seq.*

(*t*) Corporation Statement, 1921, p. 75.

(*u*) L.G.A., 1929, ss. 1, 18; 10 Statutes 883, 894.

(*a*) Repealed by the Lunacy Act, 1890.

Council are the local authority (*b*), and the control of the hospital now rests with the visiting committee nominated by the County Purposes Committee. The hospital, which admits private patients, is practically self-supporting. [469]

The Valuation and Rating Department, established April 1, 1908, under the City of London (Union of Parishes) Act, 1907 (*c*), has taken over the work formerly done by the 112 parishes of the city, the assessment committee of the guardians and by various sets of officials, assistant overseers, collectors of police, poor, consolidated and ward rates and the like. It works under the Assessment, Valuation, and Rates Finance Committees, and its expenses are charged in proportion to services performed, upon the general rate and the poor rate. [470]

CONNECTED INSTITUTIONS

Historically connected with the corporation are several bodies now exercising independent functions, but of which the personnel is wholly or partly drawn from the corporation. [471]

The Lieutenancy of London, which consists of the Lord Mayor, aldermen, recorder, town clerk, common serjeant, the aldermen's deputies of the several wards and a number of prominent merchants and citizens recommended by the Lord Mayor for approval by the Secretary of State for War, is perpetuated by commissions issued from time to time under the Great Seal in accordance with the Militia Acts of 1661 and 1662 (*d*). The commissioners have similar powers to those vested in a Lord Lieutenant within his county and are enabled to raise a trophy tax every year by precept to the Common Council (*e*), but require to do so only about once in three years. Since the practical abolition of the militia, the lieutenancy has devoted its energies more exclusively to the Territorial Army, towards the encouragement of which it has statutory sanction for applying the proceeds of the tax (*f*). The Finsbury barracks have been placed at the service of the Territorial Association, and the members of the Lieutenancy have formed a club for advancing the Territorial movement by subscriptions among themselves. [472]

The Irish Society is a chartered body, which owes its origin to a royal plan for establishing a Protestant colony in the province of Ulster, which was reluctantly adopted by the corporation and the Livery Companies in the reign of James I. (*g*). By Articles of Agreement of January 28, 1610, the corporation undertook to rebuild Derry and Coleraine and raise £20,000, receiving certain estates forfeited in the reign of Elizabeth. This sum was increased to £60,000 and assessed upon the Livery Companies, to which were allotted landed property in proportion to their contributions. Londonderry and Coleraine, with their contiguous lands, were retained by the Irish Society, a body which was formed by the corporation soon after the

(*b*) S. 240 ; 11 Statutes 69.

(*c*) S. 11 ; 14 Statutes 603.

(*d*) Stats. (1661), 13 Car. II., c. 6, s. 1 ; (1662), 14 Car. II., c. 3, s. 1.

(*e*) City of London (Union of Parishes) Act, 1907, s. 16 ; 14 Statutes 606.

(*f*) Territorial and Reserve Forces Act, 1907, s. 39 (*5*) ; 17 Statutes 297 ; Auxiliary Air Force and Air Force Reserve Act, 1924, s. 1 ; 17 Statutes 423.

(*g*) Historical Narrative of the Irish Society, pp. 3, 4 ; Royal Commission, 1921, Corporation Statement, p. 56.

agreement. The society consisted of a governor, who must be an alderman, a deputy-governor, being a common councilman, the recorder, five other aldermen and eighteen common councilmen, and its constitution was confirmed by Letters Patent of March 29, 1613, and a charter of April 10, 1662. In accordance with the constitution, twelve new members are elected annually by the Common Council to take the place of the same number retiring after two years' service. The Livery Companies have now disposed of their estates, but the Irish Society still retains its estates and revenues. Though it has no precise fiduciary responsibilities (*h*), except in so far as the corporation undertook in 1660 and 1662 to carry out certain immediate improvements, the society treats itself as a body having public duties and the estates as a moral trust, and expends its revenues, according to its unfettered discretion, in public purposes for the benefit of the inhabitants. [473]

The Royal Hospitals.—The dissolution of the monasteries by Henry VIII. having rendered destitute great numbers of poor and sick people, including children, the corporation petitioned that the hospitals of St. Bartholomew, St. Thomas and Bethlehem might be conveyed to them. The King, in answer, re-established St. Bartholomew's Hospital in 1544 (*i*), and in 1547 conveyed it to the corporation, together with the monastery of Grey Friars and the Hospital of Bethlehem (*k*). In 1551 the corporation purchased St. Thomas's Hospital for £2,500 and obtained Bridewell from Edward VI. in 1553 (*l*), the latter institution being afterwards managed in conjunction with Bethlehem. Steps were taken to raise voluntary funds and levy rates for the support of the hospitals and in 1557 orders were made for the election of governors, consisting of aldermen and citizens, to administer the hospitals (*m*). Owing to disputes between the corporation as governors of the possessions of the hospitals and the acting governors an agreement was made and confirmed by statute in 1782 (*n*). Under this scheme all the aldermen are *ex officio* governors, and twelve common councilmen are appointed for each hospital to serve with the other governors. In 1890, Christ's Hospital was placed under a scheme of the Charity Commissioners, by which the aldermen, with the exception of the Lord Mayor, were deprived of their rights of presentation. The hospital seals are in the custody of the Chamberlain and documents requiring those seals are forwarded by the governors with a docquet to the chamber in order that they may be sealed at the next meeting of the Court of Aldermen or of Common Council. [474]

The Gresham Committee.—The corporation also supplies half the personnel of the Gresham Committee, the other half being appointed from the Mercers' Company. This committee administers the bequest of Sir Thomas Gresham, who in 1755 left the Royal Exchange and his house to the corporation and the Mercers' Company. At Gresham College lectures are delivered in accordance with the testator's direc-

(*h*) Judgment of House of Lords by Lord Chancellor Lyndhurst, August 8, 1845, in *Skinnors' Company v. Irish Society and Others*, 12 Cl. & Fin. 425; 8 Digest 380, 1933. See also High Court of Ireland, Chancery Division, judgment of the Master of the Rolls in *A.-G. v. Irish Society and Others*, unreported, 1898.

(*i*) Patent Roll, 1544 (36 Hen. VIII.), Part II., m. 41.

(*k*) Patent Roll, 1547 (38 Hen. VIII.), Part V.

(*l*) Memoranda rel. to Royal Hospitals, 1863, pp. 52, 59.

(*m*) *Ibid.*, p. 77.

(*n*) Stat. (1782), 22 Geo. 3, c. 77.

tions, and the corporation side of the committee is charged to pay pensions to the inmates of the Gresham almshouses. The latter were re-erected in 1883 at the cost of City's Cash. [475]

Emmanuel Hospital.—The Court of Aldermen administers the charity known as Emmanuel Hospital, founded in 1600 in accordance with the will of Lady Anne Dacre (1594), and is represented among the governors of the United Westminster Schools, which now carry on the educational work of the trust. [476]

CITY OF OXFORD

See OXFORD, CITY OF.

CITY POLICE

See BOROUGH POLICE.

CIVIL LIABILITY OF CORPORATIONS FOR ACTS OF SERVANTS

See ACCIDENTS.

CLASSIFIED ROADS

See ROADS CLASSIFICATION.

CLEANSING OF CHILDREN

See EDUCATION SPECIAL SERVICES.

CLEANSING OF HOUSES

See INSANITARY HOUSES.

CLEANSING OF PERSONS

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See also titles : DISINFECTION ;
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1. Cleansing of Persons Act, 1897 (a). *Cleansing by consent only.*—This Act is of general application, but limits the power of a local authority to cleansing of persons and clothing on request. Greatly extended powers are conferred upon local authorities under Part IV., P.H.A., 1925 (b), which enables local authorities to employ compulsion for the cleansing not merely of verminous persons and clothing but also of verminous articles and houses. Sect. 48 P.H.A., 1925, is adoptive by any borough, urban or rural D.C. Once this section is adopted the local authority ceases to be the authority under the Cleansing of Persons Act, and any buildings, appliances or attendants provided under this Act are to be treated as provided under the P.H. Acts.

Under the Act of 1897 any local authority may, if they think fit, permit any person who applies on the ground that he is infested with vermin, to have the use, free of charge, of the apparatus (if any) which the authority possess for cleansing the person and his clothing from vermin. The use of such apparatus shall not be considered to be poor relief or charitable allowance, and neither the applicant nor his parent is to suffer any disqualification or disability by reason of using the same. [477]

Powers of Providing Cleansing Stations.—Local authorities may spend any reasonable sum on buildings, appliances and attendants that may be necessary for the carrying out of this Act, and any expenses for the purpose may be defrayed out of any rate or fund applicable for general sanitary purposes or for the relief of the poor.

Where any sanitary authority within the district of a local education authority have provided or are entitled to use any premises or appliances

for cleansing the person or clothing of persons infested with vermin they must, by sect. 87 (3) of the Education Act, 1921 (c), if required, allow the local education authority to use such premises or appliances for the purposes of sect. 87 (Cleansing of Verminous Children) of the Act of 1921 in return for such payment as may be agreed, or in default of agreement as settled by the M. of H. [478]

Local Authorities who may Exercise the Powers.—In the 1897 Act the definition of local authority is “the council of any county borough, the district council of any district, and any board of guardians.” Upon the abolition of boards of guardians, para. 1 of the Tenth Schedule to the L.G.A., 1929 (d), substituted in the above provision for “board of guardians” the words “council of a county or county borough.” In so far as the Act of 1897 gave power to a board of guardians, it was intended to enable those boards to deal with vagrants and formed part of the Poor Law. The powers of the Act may therefore be exercised by county and county borough councils as a form of public assistance, and a county borough council has apparently a double power of action (a) as the sanitary authority, and (b) as the poor law authority. As the poor rate and the general district rate have been consolidated into the general rate, it is probable that this duplication of powers is now of little practical importance. [479]

2. Cleansing of Verminous Persons (P.H.A., 1925, Part IV., sects. 48, 49, 50). *Adoption of Statutory Provisions.*—The procedure for the adoption of these sections is laid down in sect. 5 and Sched. III., P.H.A., 1925 (e). They may be adopted by any borough or district council, but not by a county council. Although sects. 3, 4 of the P.H.A., 1925 (f), allow sect. 48 to be adopted by itself, it is obviously necessary that sects. 49 and 50, which contain the power to provide cleansing stations, apparatus and attendants, and define some of the terms used in sect. 48, should be adopted simultaneously with sect. 48. [480]

Cleansing on Application.—Upon the application of any person the local authority may, if they think fit, take such measures as may in their opinion be required to free him and his clothing from vermin. It will be noted that the local authority has the option, and this is simply a re-enactment of the power contained in sect. 1 of the Cleansing of Persons Act, 1897, which ceases to be operative where sect. 48 is adopted. [481]

Cleansing on Report of M.O.H.—On a report from the M.O.H. (g) that any person or his clothing is infested with vermin the local authority may cause that person to be removed to a cleansing station if such person consents. It will be noticed that the consent of the person on whom the report is made must be obtained before he is removed.

If he should not consent to his removal, then a petty sessional court, if satisfied on the application of the local authority that it is necessary that he or his clothing should be cleansed, may make an order for his removal to a cleansing station and for his detention therein for such period and subject to such conditions as may be specified in the order.

(c) 7 Statutes 177.

(d) 10 Statutes 995.

(e) 13 Statutes 1117, 1155.

(f) *Ibid.*, 1116.

(g) In s. 48 of the P.H.A., 1925, “the medical officer” means the M.O.H.; see s. 13 of the P.H.A. Amendment Act, 1907; 13 Statutes 913, applied by s. 7 of the Act of 1925.

A person aggrieved by the order of the petty sessional court may appeal, under sect. 7 of the P.H.A. Amendment Act, 1907 (*h*), as applied by sect. 7 of the P.H.A., 1925 (*i*), to quarter sessions against the order. [482]

Conditions of Compulsory Cleansing.—When a person has been removed to a cleansing station the local authority must take such measures as they think necessary to free him or his clothing from vermin.

No consent is required where a local education authority are exercising their powers of cleansing verminous children attending public elementary schools (sect. 87, Education Act, 1921) (*j*), but the consent required by sect. 48 (2) of the P.H.A., 1925, may in the case of a person under sixteen years of age be given on his behalf by a parent or guardian (sub-sect. (4)).

The powers given to the local authority by sect. 48 may be limited by conditions imposed by the order of the magistrates.

The cleansing of females can only be done by a registered medical practitioner or by a woman duly authorised by the M.O.H. (sect. 48 (5)).

No charge can be made by the local authority for the cleansing of a person, or his removal to or maintenance at a cleansing station; and such cleansing, removal and maintenance shall not be considered to be parochial relief or charitable allowance to the person cleansed or to the parent of such person, and neither he nor his parent shall by reason thereof be deprived of any right or privilege or be subject to any disqualification or disability (sect. 48 (6)).

Whether cleansing is by consent or compulsory the full cost falls on the local authority. [483]

Penalties.—Any one wilfully disobeying or obstructing the execution of an order under this section is liable to a penalty not exceeding £5 (sect. 48 (7)). This penalty is recoverable before a court of summary jurisdiction under sect. 6 of the P.H.A. Amendment Act, 1907 (*k*), as applied by sect. 7 of the Act of 1925 (*l*).

Cessation of operation of Act of 1897.—Upon the adoption of sect. 48, the council cease to be the local authority for the purposes of the Cleansing of Persons Act, 1897, and any buildings, appliances or attendants provided under that Act are to be treated as having been provided by that authority under the P.H.As., 1875 to 1907 (sect. 48 (8)). [484]

Position of Local Education Authority.—Powers under this section are in addition to, and not in derogation of, any power relating to the cleansing of children that may be exercisable by the council as local education authority.

The local education authority have the right to use any cleansing station or appliances provided by a sanitary authority within the district of the local education authority, upon such payment as may be agreed between them, or in default of agreement settled by the M. of H. (*m*). It will be noticed that this provision does not cover a station or appliances provided by a poor law authority. [485]

Powers may be Exercised Jointly.—The local authority may themselves provide or combine with others to provide such cleansing stations, apparatus and attendants as may be necessary for the exercise of their powers, and may provide for the appointment of a joint committee for

(h) 13 Statutes 913.

(j) 7 Statutes 177.

(l) *Ibid.*, 1117.

(i) *Ibid.*, 1117.

(k) 13 Statutes 913.

(m) Education Act, 1921, s. 87 (3); 7 Statutes 177.

this purpose, or they may contract with any other local authority or person for the provision of such stations, etc. (n). There is no definition of the term "cleansing station" given in the sections under review.

[486]

Definition of Vermin.—The expression "vermin" in its application to insects and parasites includes their eggs, larvæ and pupæ, and the expression "verminous" is to be construed accordingly (o). [487]

Remarks.—Some local authorities have clauses in local Acts similar to sects. 48, 49 and 50 of the P.H.A., 1925, e.g. Bolton, Oxford, Rotherham, Salford, Wolverhampton, etc.

Few authorities have special cleansing stations, but the majority use premises at the isolation or other hospital.

The powers with regard to cleansing of persons are rarely put into operation by local authorities, and the majority of patients accept cleansing voluntarily after a little persuasion, especially when the threat of obtaining an order is made. The provision in sub-sect. (2) of sect. 48 of the P.H.A., 1925, that the application to a petty sessional court should be made by the local authority is usually interpreted to necessitate a resolution of the council, and this may lead to considerable delay. Most difficulty arises in the case of very old people who have become infested with vermin, and feel the greatest reluctance to be removed to a place for cleansing. Usually, moreover, such people are bedridden, and cannot be taken to a cleansing station without risk of grave harm to their health.

Cases of this kind, after a great deal of persuasion, can often be induced to go into a public assistance institution for cleansing whilst the local health authority cleanses the premises during their absence.

In the work of re-housing in slum clearance schemes under the Housing Act of 1930 (p), the possibility of freeing from vermin the occupants of slum property before they occupy their new quarters will have to be faced by the local authorities concerned, and it is likely that cleansing stations will have to be put to considerable use in this connection. [488]

London.—The Cleansing of Persons Act, 1897 (q), applies to London, and, by sect. 2, in the County of London "local authority" in that Act means any sanitary authority as defined by the P.H. (London) Act, 1891 (r).

The law relating to the compulsory cleansing of verminous persons is contained in Part V. of the L.C.C. (General Powers) Act, 1907 (s), and sect. 26 of the L.C.C. (General Powers) Act, 1928 (t). Under sect. 37 of the Act of 1907, if the medical officer or any person having his authority in writing has reason to suspect that the person or clothing of any inmate of any common lodging-house within the County of London (elsewhere than in the City) is infested with vermin or is in a foul or filthy condition, he may enter the premises and examine the person or his clothing and may by notice in writing require such person within twenty-four hours to submit himself and his clothing to be cleansed.

Under sect. 38 of the Act of 1907, the council and any sanitary authority may make agreements and arrangements as to the cleansing

(n) P.H.A., 1925, s. 40; 13 Statutes 1136.

(p) 23 Statutes 396.

(r) S. 99; 11 Statutes 1080.

(t) *Ibid.*, 1409.

(o) *Ibid.*, s. 50.

(q) See *ante*, p. 196.

(s) 11 Statutes 1281.

of persons or clothing under that Part of the Act and as to the use for that purpose of premises and appliances belonging to the sanitary authority. Sect. 40 gives power to the council to make regulations with respect to these matters.

Where it appears to a sanitary authority on a report from the medical officer that any person or the clothing of any person is infested with vermin and that person does not consent to be removed to a cleansing station, an order may be made by a petty sessional court for the removal of such person or clothing to a cleansing station (*u*).

Sanitary authorities have power to provide cleansing stations, apparatus and attendants under sect. 26 (5) of the L.C.C. (General Powers) Act, 1928 (*u*). [489]

(*u*) L.C.C. (General Powers) Act, 1928, s. 26 ; 11 Statutes 1409.

CLEANSING OF ROADS

See SCAVENGING.

CLEANSING OF SHELL FISH

See SHELL FISH, CLEANSING OF.

CLEARANCE AREA

See SLUM CLEARANCE.

CLERGY

See CHAPLAINS.

CLERK OF THE COUNTY COUNCIL

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See also titles :

CLERK OF THE PEACE ;
COUNTY COUNCIL ;
DUTIES AND POWERS OF OFFICERS ;
LOCAL LAND CHARGES.

MINUTES ;
RECORDS AND DOCUMENTS ;
SUPERANNUATION.

(1) **Introductory.**—The office of clerk of the county council is purely statutory, and the principal provisions governing the office appear in L.G.A., 1888, L.G. (Clerks) Act, 1931, and L.G.A., 1933.

Until the passing of the L.G. (Clerks) Act, 1931 (*a*), the office of clerk of the county council was held by the clerk of the peace of the county. The L.G.A., 1888 (s. 83) (*b*), provided that the clerk of the peace of a county should act as clerk of the county council, and clerks of the peace, holding office at the commencement of the L.G.A., 1888, became, by operation of the statute, clerks of the county councils established for their several administrative counties. Such clerks of the peace retained the power of appointing deputy clerks of the peace (L.G.A., 1888, sect. 118) (*c*). The appointments of clerk of the peace and of deputy clerk of the peace were transferred from the justices in quarter sessions to the standing joint committee of the county council and the quarter sessions, and the salary of the clerk of the peace (including salary in respect of his services as clerk of the county council) was fixed from time to time by orders of the Home Secretary under the then existing enactments relating to the salary and fees of the clerk of the peace (L.G.A., 1888, sect. 83 (2), (4), (5)) (*b*). [490]

(2) **The L.G. (Clerks) Act, 1931 (*d*).**—This Act separated the office of clerk of the county council from that of clerk of the peace, and enabled a county council to appoint its clerk on a vacancy occurring. Any person holding office as clerk of the peace at the passing of the Act (July 31, 1931), continues to hold both offices at a single salary, which continues to be regulated by H.O. order made under the statutes (Criminal Justice Administration Act, 1951 (*e*), and L.G.A., 1888), which in so far as they relate to the salaries and fees of clerks of the peace of counties are repealed by the L.G. (Clerks) Act, 1931. The standing joint committee may recommend reconsideration of these salaries (L.G. (Clerks) Act, 1931, sects. 1 and 3 (1)).

(*a*) 24 Statutes 240.
(*c*) *Ibid.*, 765.
(*e*) 4 Statutes 523.

(*b*) 10 Statutes 758.
(*d*) 24 Statutes 240.

Deputy clerks appointed before July 31, 1931, are deemed to have been appointed deputy clerk of the peace and deputy clerk of the county council under the L.G. (Clerks) Act, 1931, upon such terms as to remuneration in respect of each office as shall entitle the officer to a total remuneration equal to that previously received in respect of the joint office; any apportionment of salary is to be made by the standing joint committee (L.G. (Clerks) Act, 1931, sect. 7 (3)). [491]

(3) **The L.G.A., 1933.**—The clerk of a county council will in future be appointed, paid and hold office under sects. 98 to 101 of the L.G.A., 1933(f), and will be subject to the new provision in sect. 123 of that Act requiring an officer who is aware that a contract in which he has any pecuniary interest, whether direct or indirect (not being a contract to which he is himself a party), has been, or is proposed to be entered into by the council, or any committee of the council, to give written notice of the fact that he is so interested. The question whether an indirect pecuniary interest in a contract exists will be governed by the considerations mentioned in sect. 76 (2) and (3) of the Act, which are applied for this purpose.

Sect. 123 also prohibits an officer, under colour of his office or employment, from exacting or accepting any fee or reward (g) other than his proper remuneration.

The Act of 1933 contains in sects. 124 and 307 savings for existing officers. Apart from the provision in sect. 121 allowing the terms of the appointment of an officer who holds office at pleasure to be varied, nothing in Part IV. of the Act is to affect the salary or tenure of office of any officer who held office on June 1, 1934. The repeal (except as to London) of various enactments, as to the clerks of county councils, made by sect. 307 of the Act is not to affect any appointment made under a repealed enactment, and any such appointment, so far as it could have been made under the Act of 1933, is to have effect as if it had been made under the corresponding provision of that Act. [492]

(4) **Qualifications and Appointment.**—The only statutory qualification for office is that the clerk shall be "a fit person" (L.G.A., 1933, s. 98)(f); he need not be a barrister or solicitor. Before making an appointment the county council must have regard to the fitness of the candidate to perform the duties of clerk of the peace, and for that purpose must consult the chairman of quarter sessions, but the two offices need not be held by the same person (L.G.A., 1933, sect. 98).

By sect. 122 of the L.G.A., 1933, a member of a county council is disqualified for appointment as clerk of the same county council, while he is a member and for twelve months after he has ceased to be one.

For the conditions under which the clerk of the county council may become clerk of the peace, see title CLERK OF THE PEACE.

The salary of the clerk of the county council is determined by the council and is subject to the approval of the Minister of Health. The salary is inclusive and all fees and costs payable to the clerk are to be paid over to the county fund except so far as they are expressly excluded when the salary is fixed. The expression "fees and costs" includes sums paid to the clerk as personal remuneration in respect of the registration of voters, and in respect of Parliamentary elections (L.G.A., 1933, sect. 99 (3)).

(f) 26 Statutes 358—60.

(g) As to the meaning of these words, see *Edwards v. Salmon* (1889), 23 Q. B. D. 531; 33 Digest 17, 61.

A county council may appoint a deputy clerk, who will act whenever the office of clerk is vacant or the clerk is unable to act; when so acting, and subject to the terms of his appointment, the deputy clerk performs all the functions of the clerk (*ibid.*, sect. 115). There are no statutory qualifications for the office of deputy clerk. A temporary deputy is appointed under sect. 116 of the Act (see p. 208, *post*). [493]

(5) **Duties.**—The clerk performs his duties in accordance with the directions of the council (L.G.A., 1933, sect. 101), and these directions may be contained in standing orders, or resolutions of the council, or may be assumed from long-continued practice approved or acquiesced in by the council. Any directions comprised in standing orders or resolutions of the council intended to apply to an existing clerk should have due regard to the terms and conditions of his appointment.

The duties of the clerk are to summon and attend meetings of the council and committees, to keep the minutes and records of the council, and of those committees of which he is clerk, and to conduct their correspondence. In practice the clerk acts as the principal administrative officer of the council, and among his more important functions are the co-ordination of the work of the several committees of the council, and the guidance of the council on matters of policy. The clerk of the council is clerk of all committees of the council unless a separate appointment is made, and he is the statutory clerk of the standing joint committee (L.G. (Clerks) Act, 1931, sect. 5 (4) (h)). It is no part of the duties of the clerk *quâ* clerk to act as legal adviser to the council, or to perform legal work such as conveyancing and litigation. In practice, the clerk is usually required to be qualified to carry out the legal work of the council, and his salary is inclusive of some or all the legal work, but his duties in this respect should be specified in the terms of his appointment.

It appears to be undesirable that a clerk of a county council, who is also clerk of the peace, should act as a solicitor in prosecutions or other legal proceedings at the county quarter sessions (*cf.* observations of Lord HEWART, L.C.J., in *R. v. Ely JJ., Ex parte Mann* (i)).

Similarly the clerk of the council, *quâ* clerk, is not under any duty to carry out Parliamentary business, but where no separate Parliamentary officer is appointed, the general practice is for the clerk to examine, and report upon, Bills affecting the council's interests, and to instruct Parliamentary agents on behalf of the council.

The duties of the clerk of the county council with regard to the custody of county records and documents originated with the inception of county councils. By L.G.A., 1888, sect. 83 (3) (j), the clerk of the peace was made responsible for the custody of county records and documents, subject to the directions of the *Custos Rotulorum*, quarter sessions, or county council as the case might be. Enactments relating to the deposit of plans and documents were to be construed as if the clerk of the council were substituted for the clerk of the peace (L.G.A., 1888, sect. 83 (6)). By L.G. (Clerks) Act, 1931, sect. 5 (1), the provisions of L.G.A., 1888, sect. 83 (6), were applied to the clerk of the county council; by sub-sect. (3) of sect. 5 the county records and documents then (July 31, 1931) in the custody of the clerk of the peace and county council and relating to the administrative business of the

(h) 24 Statutes 245. See also *post*, p. 311, as to the appointment of an independent person to act as clerk of the council.

(i) (1928), 93 J. P. 45; Digest (Supp.).

(j) 10 Statutes 753.

county, were placed in the custody of the clerk of the county council, subject again to the directions of the *Custos Rotulorum*. The position is clarified by the re-enactment in sect. 101 of the L.G.A., 1933, of the provisions of L.G. (Clerks) Act, sect. 5 (1), and by the consolidation of sect. 5 (3) and of earlier statutes in sects. 279 (1) and 280 (1), (2) and (3) of L.G.A., 1933. These last enactments provide (a) that without prejudice to the power of the *Custos Rotulorum*, all county records and documents in the custody of the clerk of the county council on June 1, 1934, and all future records and documents relating to county administrative business shall be in the custody of the clerk of the council, and (b) that on deposit of any document with the clerk of the county council, pursuant to parliamentary standing orders or any enactment or statutory order (*k*), the clerk shall receive and retain the document, and make such endorsements and give such receipts as may be required by the standing order, enactment or statutory order. Except as otherwise provided therein, persons interested must be allowed to inspect and make copies of deposited documents on payment of one shilling per inspection with an additional fee of a shilling for every hour during which the inspection continues after the first hour. Any person obstructing any one in the exercise of the last-mentioned rights is liable, on summary conviction, to a fine not exceeding £5.

Sect. 6 of the L.G. (Clerks) Act, 1931 (*l*), allowed the clerk of a county council a fee on the deposit with him of a document pursuant to standing orders, or any Act, rules or regulations, but this provision is repealed, without re-enactment, by the L.G.A., 1933. The Chelmsford Committee considered (*m*) it anomalous that fees should be paid when documents were deposited with a county council, but not with other local authorities, and that county councils might reasonably be required to take custody of these documents without fee, provided that they are enabled to make proper charges for the expense involved in the documents being available for public inspection.

The office of *Custos Rotulorum*, although of great dignity and antiquity, is now to all intents and purposes a sinecure; it is unlikely, in practice, that directions given by this officer would affect the custody of documents under the statutory charge of the clerk of the county council (see titles *CUSTOS ROTULORUM* and *RECORDS AND DOCUMENTS*).

The clerk of the council is not necessarily clerk of the visiting committee of the mental hospital. This committee is appointed by the council, but it appoints its own clerk (*n*), and may appoint the clerk of the council. In the counties of Lancashire, Staffordshire and West Riding of Yorkshire there is a Mental Hospitals Board established by private Acts of Parliament, and in those cases the board appoint the clerk of the board, who ordinarily would be clerk of the committee.

The clerk of the visiting committee continues in office so long as the committee continues in office, *i.e.* until the first meeting of their successors (subject to the committee's power of discharging the clerk). The remuneration is fixed by the visiting committee and is payable out of the sums received in respect of the maintenance of the patients.

The local pension committee (*o*) which determines claims and questions as to old age pensions is, as regards the county outside boroughs

(*k*) Defined in s. 305 of the Act as meaning any order, rule or regulation made under any enactment.

(*l*) 24 Statutes 245.

(*m*) See Cmd. 4272, p. 99.

(*n*) Lunacy Act, 1890, s. 176; 11 Statutes 79; and Mental Treatment Act, 1930, s. 7 (2); 23 Statutes 163.

(*o*) Old Age Pensions Act, 1908, s. 8; 20 Statutes 583.

and urban districts with populations exceeding 20,000, appointed by the county council, but it is not a committee of the county council. The expenses of the committee are wholly defrayed out of moneys provided by Parliament. If the clerk of the county council acts as clerk of this committee it is necessary for some arrangement to be made with the council as to the receipt of fees and the payment of the expenses of the committee.

The clerk of the county council is not necessarily returning officer at elections of county councillors. This work is not part of the work of the clerk, but is the function of a special officer appointed for the purpose by the county council (*p*). It is a matter of arrangement whether this office is held by the clerk, or whether if the chairman of the council is appointed returning officer, the work is carried out by the clerk. The remuneration of the returning officer is according to a scale fixed by the council and payable out of the county fund (*q*).

The county returning officer appoints his own deputy, and if it is desired that the deputy clerk of the council should be deputy returning officer, he should be so appointed by the returning officer.

Apart from the administrative work of the council and these other duties which he may be called upon to perform, the clerk of the county council is by virtue of his office the officer for the registration of electors in the county (except for any part of it which is in a Parliamentary borough), provided that the Parliamentary county is wholly comprised in, or is co-terminous with the administrative county. If this is not the case, the registration officer is appointed by order of the H.O. (Representation of the People Act, 1918, sect. 12) (*r*).

A clerk who is a registration officer is, by virtue of the latter office, acting returning officer for Parliamentary elections, save in respect of any duties which the sheriff, as returning officer, undertakes personally (Representation of the People Act, 1918, sect. 30) (*s*). In practice it is advisable that the clerk should consult the sheriff before taking any steps in a Parliamentary election.

It would appear that a deputy clerk is not, *ex officio*, deputy registration officer, or deputy acting returning officer. The appointment of the deputy clerk to act in either of these capacities should be made by the registration officer or acting returning officer, as the case may be, and requires the approval of the H.O.

The clerk's personal remuneration as registration officer and acting returning officer must be paid into the county fund unless the fees are expressly excluded when his salary is determined (*t*). The employment and remuneration of the council's staff for the work of registration of electors and the conduct of Parliamentary elections is a matter of arrangement between the council and the clerk (L.G.A., 1933, sect. 105 (3)).

If such an arrangement is made, the Treasury should be consulted as to the terms proposed in order to obviate difficulties on claiming the charges or fees payable out of monies provided by Parliament.

The clerk of the county council is also registrar of local land charges created or enforceable by the county council. This work is paid for by fees out of which the register has to be maintained. Arrangements can be made with the clerk of the council under which the maintenance of the register is undertaken, and the fees received by the council (see title LOCAL LAND CHARGES).

(*p*) L.G.A., 1933, s. 14.

(*s*) *Ibid.*, 566.

(*q*) *Ibid.*, s. 16.

(*t*) L.G.A., 1933, s. 99 (2).

(*r*) 7 Statutes 555.

Duties are placed upon clerks of county councils in relation to births and deaths under schemes made for the administration of the Registration Acts. In accordance with sect. 24 of the L.G.A., 1929, clerks of county councils have imposed upon them the general duty of supervising the administration of registration functions, and the regulation of the hours of attendance of registrars of births and deaths; the distribution of business between these officers, the transfer of officers from one district to another, and consequent rearrangement of their work.

In dealing with matters arising under the Poor Law Act, 1930, it should be noted that the expression "clerk to the council" in that statute includes any officer appointed or designated by the council for any poor law purpose (Poor Law Act, 1930, sect. 163) (*u*).

The clerk or deputy clerk of a county council who is a paid, permanent, and whole-time officer of the council is not eligible to serve in Parliament (L.G.A., 1888, sect. 83 (13)) (*a*). [494]

(6) **Termination of Office.**—The office of clerk is held subject to the pleasure of the council so, however, that the consent of the Minister of Health is required to his dismissal (*b*).

Notwithstanding the decision in *Brown v. Dagenham U.D.C.* (*c*), the terms on which the clerk or deputy clerk holds office may include a provision requiring an agreed reasonable notice to be given by one party to the other prior to termination of the office. Any enactment providing that an office shall be held at pleasure will not affect a right or obligation to retire under a superannuation scheme on attaining a specified age, or on the happening of a specified event (L.G.A., 1933, sect. 121).

The office becomes vacant on the holder attaining the age of sixty-five years unless the council, with the holder's consent, extends the period of office (*d*). This may be done for periods of not more than one year at a time, provided that, if the holder is clerk of the peace also, a similar resolution is passed by the court of quarter sessions.

The office also becomes vacant if the holder becomes incapable by ill-health of discharging the duties with efficiency (*d*). Any dispute as to whether the clerk has become incapable of discharging his duties is referred to the Minister of Health, whose decision is final (L.G.A., 1933, sect. 100 (4)).

A pre-1931 clerk does not automatically vacate his offices on attaining sixty-five, but they can be terminated on his attaining that age by notice from the standing joint committee under sect. 4 (2) (b) of the L.G. (Clerks) Act, 1931. Until he attains sixty-five he holds office during good behaviour, and any question of misconduct is determined by the joint committee (sect. 4 (5), (7)). If he is dismissed for misconduct otherwise than in the execution of his office, that is, for misconduct which renders him an unfit person to hold those offices, the clerk has a right of appeal to the High Court (sect. 4 (5)).

A standing deputy clerk of the county council holds office during the pleasure of the council (L.G.A., 1933, sect. 115); his appointment may include a provision requiring notice to be given before the termination of the appointment (L.G.A., 1933, sect. 121), and if he held office as deputy clerk of the peace and county council prior to July 31, 1931,

(*u*) 12 Statutes 1047.

(*b*) L.G.A., 1933, s. 100 (1), reproducing s. 4 (6) of the L.G. (Clerks) Act, 1931.

(*c*) [1929] 1 K. B. 737; Digest (Supp.).

(*a*) 10 Statutes 755.

(*d*) L.G.A., 1933, s. 100 (3).

he holds the separate offices of deputy clerk of the peace and deputy clerk of the county council on the same terms as to notice as before the passing of L.G. (Clerks) Act, 1931, but, *semble*, in this case either office can be vacated without vacating the other office, and notice should be given to, or by, the court of quarter sessions and the county council respectively (L.G. (Clerks) Act, 1931, sect. 7 (3)). [495]

(7) **Superannuation.**—A pre-1931 clerk was allowed by sect. 28 of the Local Government and other Officers' Superannuation Act, 1922 (e), to give notice that he did not wish to avail himself of the Act and then he made no contribution either to the superannuation fund or to the county fund in respect of pension. Unless he is dismissed for fraud or grave misconduct, he is entitled under sect. 9 (2) of the L.G. (Clerks) Act, 1931 (f) to a pension, payable out of the county fund :

- (a) on attaining sixty-five years ; or
- (b) on attaining sixty years after forty years' service ; or
- (c) on becoming incapable by ill-health after ten years' service.

The pension is calculated at one-sixtieth of his average salary and emoluments during the last five years for each year of service.

"Service" means either whole-time or part-time service, after the attainment of eighteen years of age, as clerk of the peace and county council, or before July 31, 1931, as a deputy clerk of the peace and county council, or in the employment of a clerk of the peace and county council for the purposes of any office held by him as such clerk (L.G. (Clerks) Act, 1931, sect. 9 (2)). But in the case of a full-time clerk, who has formerly served as a part-time officer, any period of part-time service is, under para. 2 (b) of the Second Schedule to the Act, to be treated as whole-time service for a proportionately reduced period. Service before July 31, 1931, as a permanent employee of a local authority, or of an officer of a local authority for the purposes of his public office, may be included in the calculation (L.G. (Clerks) Act, 1931, sect. 9 (2)).

The amount of the superannuation allowance is based on the net personal salary and emoluments as clerk of the peace, clerk of the council, registration officer, and of any other public office held by him by virtue of the clerkship of the peace and county council, or with the consent of the quarter sessions or county council, or standing joint committee or other committee (*ibid.*, Second Schedule) (g).

If the county council have adopted the Local Government and other Officers' Superannuation Act, 1922 (e), the office of clerk of the council, if occupied by a person appointed after July 31, 1931, is under sect. 9 (1) (b) of the Act of 1931 a designated post.

The provisions of the Superannuation Act, are, however, modified by L.G. (Clerks) Act, 1931, sect. 9, and Sched. I., Part II.

If the county council have not adopted a superannuation scheme, a clerk appointed after July 31, 1931, is subject to Part I. of the First Schedule to the Act, and contributes 5 per cent. of his salary to the county fund. The conditions under which he becomes entitled to a pension are :

- (a) attainment of age of sixty-five years with not less than ten years' contributing service ;
- (b) attainment of age of sixty years with not less than forty years' contributing service ;

- (c) becoming incapable by ill-health after ten years' contributing service.

A clerk who is fifty-five years of age when appointed does not contribute (unless he has previous contributing service with some other authority), and no contributions are made after attaining sixty-five years of age.

The pension is calculated at one-sixtieth of the average salary during the last five years for each year of contributing service (up to forty), and salary as clerk of the peace is included if the clerk holds both offices. Where a full-time clerk has formerly served as a part-time clerk or other officer or servant, the period of part-time service is, under para. 9 of Part I. of the First Schedule to the Act, to be treated as whole-time service for a proportionately reduced period.

If the clerk retires without being entitled to a pension, he may be entitled to a return of his contributions with or without interest, and in some cases the council may grant him a gratuity (Sched. I., Part I., paras. 4—6).

The superannuation of deputy clerks of the council is governed by the Local Government and other Officers' Superannuation Act, 1922 (*h*) (see title SUPERANNUATION). Where the deputy clerk of the council is also deputy clerk of the peace his salaries are deemed to be amalgamated for superannuation purposes (L.G. (Clerks) Act, 1931, sect. 10). [496]

(8) **Staff.**—The staff engaged to assist the clerk of the county council are employed and paid by the county council (L.G.A., 1933, sect. 105 (1), (2)). They hold office during the pleasure of the council (*ibid.*, sub-sect. (2)), subject to the general provision in sect. 121, that they may be appointed on terms that the appointment may not be terminated by either party without such reasonable notice as may be agreed. The council may assign officers to assist in the registration of electors, and in the conduct of Parliamentary elections (*ibid.*, sect. 105 (3)).

Persons who immediately before July 31, 1931, were in the permanent employment of the clerk of the peace and county council, for the purposes of his office, became officers of the county council on the same terms as to remuneration and notice (L.G. (Clerks) Act, 1931, sect. 8 (3)), and their superannuation rights (if any) were preserved (L.G. (Clerks) Act, 1931, sect. 10 (3)).

For superannuation of staff, see title SUPERANNUATION. [497]

(9) **Temporary Deputy.**—If the office of clerk is vacant, or the holder is unable to act, and either there is no permanent deputy, or the permanent deputy cannot act, the county council may appoint and pay a temporary clerk, who, subject to the terms of his appointment, has all the functions of the clerk (L.G.A., 1933, sect. 116). [498]

LONDON

In London, the office of clerk of the L.C.C. was never combined with that of clerk of the peace. By sect. 83 (11) of the L.G.A., 1888 (*i*), the office of the clerk of the county council must be separate from that of clerk of the peace, and his salary is to be fixed by the county council. He is the principal officer of the council and his duties are multifarious. He is required to devote the whole of his time to the duties of his office

(*h*) 10 Statutes 863 *et seq.*

(*i*) *Ibid.*, 754.

and must not be directly or indirectly concerned in any other business than that of the council.

He has to attend all meetings of the council, and is clerk to all committees except the education, the public assistance and the mental hospitals committees and such statutory committees as have power to appoint their own clerks. He is the principal adviser of the chairman of the council and the chairmen of committees and sub-committees. He is in charge of the library and records, and conducts all correspondence except such as the council have entrusted to the chief officer of any other department. He is the returning officer for the election of county councillors. He is also responsible for the record of motor vehicles and the registration of certain charities, and the annual reports, statistics and other publications of the council. He is required to print and publish the totals of gross and rateable values of the valuation lists of the metropolitan boroughs. This particular duty was one of the functions of the clerk of the Metropolitan Asylums Board, which was vested in the L.C.C. by sect. 44 of the L.G.A., 1888 (*k*). The clerk of the council also acts as secretary to the Lord Chancellor's Advisory Committee as regards the appointment of justices in and for the county of London. As to the City of London, see title CITY OF LONDON. [499]

(*k*) 10 Statutes, 724.

CLERK OF THE LIEUTENANCY

See LORD LIEUTENANT.

CLERK OF THE PARISH COUNCIL

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See also titles :

APPOINTMENT AND DISMISSAL OF OFFICERS ;	STAFF ;
COMPENSATION FOR LOSS OF OFFICE ;	SUPERANNUATION ;
DUTIES AND POWERS OF OFFICERS ;	TRANSFER OF OFFICERS.

Introduction.—Formerly clerks of parish councils were appointed under sect. 17 of the L.G.A., 1894 (*a*), but that section was repealed by the L.G.A., 1933, and replaced by sect. 114 of that Act (*b*). Sect. 17 of the Act of 1894 contemplated that a member of the parish council should be appointed clerk without remuneration, and that if no member was so appointed, an assistant overseer for the parish, or if there were no such officer a collector of poor rates, or some other fit person, should be appointed by the parish council to be their clerk. The assistant overseer's salary was to be increased by the parish council in consideration of the extra work, but the remuneration of a collector of

(*a*) 10 Statutes 788.

(*b*) 26 Statutes 367.

poor rates or other fit person was separately assigned (although in some instances an inclusive salary was paid to the collector by the board of guardians) and was payable by the parish council. On the abolition of assistant overseers and collectors of poor rates by the R. & V.A., 1925, sect. 48 (5) of that Act (c) provided for the apportionment of an existing officer's salary as between his duties as rate collector and his duties as clerk of the parish council, and for the payment by the parish council of the proportion allocated to the latter work.

In general, a salaried officer acts as clerk of the parish council, and a member of the parish council rarely acts as their clerk without remuneration.

As respects officers in office on June 1, 1934, proviso (v.) to sect. 307 (1) of the Act of 1933 enacts that the repeal of sect. 17 of the Act of 1894 shall not affect any appointment made under that section, and every such appointment is to have effect as if it had been made under the corresponding provision of the Act of 1933, viz. sect. 114 of that Act. Moreover, by sect. 124 (1) of the Act, nothing in Part IV. of the Act ("Officers") is to affect the salary or tenure of office of any officer holding office on June 1, 1934. [500]

Appointment and Qualifications.—In sect. 114 of the L.G.A., 1933 (b), the law has been much simplified.

A parish council may appoint one of their number to be clerk of the council, without remuneration. If no member of the council is so appointed, the council may appoint "some other fit person" to be their clerk, with such reasonable remuneration as they may determine. It will be observed that the council are not bound to make an appointment, though in practice this is usually necessary. No other qualification is prescribed except that the clerk must be a "fit person." Where the parish council act as a parochial committee, by delegation from the R.D.C., they are given a right to the services of the clerk of the R.D.C. while acting as a parochial committee, unless the district council otherwise direct (sect. 114 (3)).

Where the parish council appoint a clerk, they may also appoint under sect. 115 of the Act a standing deputy to act in place of the clerk whenever the office is vacant, or the clerk is for any reason unable to act. As an alternative, a temporary deputy clerk may be appointed by the parish council under sect. 116 of the Act, if the clerkship is vacant or the clerk is unable to act, and no standing deputy clerk has been appointed under sect. 115. A deputy clerk appointed under either of these sections, unless it is otherwise provided in the terms of the appointment, has all the functions of the clerk. The parish council may pay the deputy clerk, other than one who is a member of the council, such reasonable remuneration as they may determine (sects. 115, 116). [501]

A member of the parish council is disqualified for being appointed by the council as clerk with remuneration or to any other paid office, not only so long as he is a member, but also for six months after he ceases to be a member (sect. 122). A chairman of a parish council elected from outside the council becomes a member of the council; see the language of sect. 49 (4) of the Act. [502]

The appointment of a clerk or other officer of the parish council will be made by resolution of the council. Voting must be by show of

hands, and on the requisition of any member of the council the voting on this, as on other resolutions, must be recorded so as to show whether each member present and voting gave his vote for or against the resolution (Third Schedule, Part IV., r. 5).

Unlike sect. 107 of the L.G.A., 1933, sect. 114 of that Act does not provide that the clerk of the parish council shall hold his office during the pleasure of the council. Consequently it would seem that ordinarily he is entitled to reasonable notice of the termination of his office (*d*), or his tenure of office may be settled by the contract of service, and it is admissible to provide that, say, one month's notice should be given by either party before the appointment is terminated (sect. 121 (1)). A similar agreement may be made in the case of a standing deputy clerk, notwithstanding the provision in sect. 115 (3) that he "shall hold office during the pleasure of the council" (sect. 121 (1)). In the absence of such agreement this officer's appointment may be terminated by the parish council without notice (*e*). [503]

Functions.—The clerk should conduct all correspondence on behalf of the parish council, but should before replying to a letter consult the chairman on any matter of importance, if the letter is not submitted to the parish council at a meeting for a direction as to the course to be taken.

The parish council may by resolution authorise the clerk (or other officer or member of the council), either generally or in respect of any particular matter, to institute or defend on their behalf proceedings before any court of summary jurisdiction, or to appear on their behalf before any such court in any proceedings instituted by them or on their behalf or against them, and any person so authorised is entitled to defend or conduct such proceedings although he is not a certificated solicitor (sect. 277). [504]

The duties of the clerk of a parish council, apart from those implied by the enactments summarised above, will ordinarily include the duty of giving notice of, and attending, the meetings of the council; keeping the minutes of the proceedings of the council; keeping the parish council books and parish deeds and documents; and giving copies of or extracts from the same to any person entitled thereto on payment of the prescribed or other reasonable charge for the same; keeping the accounts of the receipts and payments of the council, including their accounts under the "Adoptive Acts," accounts in respect of allotments provided by the council, and accounts of all charity moneys which the parish council are authorised or accustomed to distribute.

The accounts of parish councils are audited annually, for the year to March 31, by the district auditor appointed by the M. of H.; and by para. 5 (1) of the Audit Regulations, 1934 (*f*), before each audit the parish council are required, at the time when notice of the deposit of the accounts prior to audit is given under sect. 224 (3) of the Act of 1933, to give public notice of the time and place of holding the audit. By sect. 287 (1) of the Act, this notice must be given by affixing it on or near the principal door of each church and chapel in the parish, and by posting it in some conspicuous place or places in the parish, and in such other manner, if any, as appears to the council desirable. Regula-

(*d*) See *Payzu, Ltd. v. Hannaford*, [1918] 2 K. B. 348; 34 Digest 65, 404.

(*e*) *Brown v. Dagenham U.D.C.*, [1929] 1 K. B. 737; Digest (Supp.).

(*f*) Provisional Regulations of the M. of H. made under Part X. of the L.G.A., 1933, in May, 1934.

tion 5 (2) requires the clerk, as soon as may be, to forward to the district auditor a certificate of compliance with the requirements.

As regards all money and property committed to the charge of the clerk (or other officer of the parish council), he is required, at such times during the continuance of his office, or within three months after ceasing to hold it, and in such manner as the council direct, to make out and deliver to the parish council, or as they direct, a true account in writing of the money and property, and of his receipts and payments, with vouchers and other documents and records supporting the entries therein, and a list of persons from whom, or to whom, money is due in connection with his office, showing the amount due from or to each (sect. 120). All money due from him must be paid to the treasurer (if any), or otherwise as the council may direct (*ibid.*). In the event of refusal or neglect to make any payment as required by this provision a court of summary jurisdiction having jurisdiction where the officer is or resides may, on complaint, by order require the clerk (or other officer concerned) to conform with the directions of the council as to payment of money due or the delivery of accounts or other documents (*ibid.*). [505]

Interest in Contracts.—The clerk of a parish council, in common with other officers of local authorities, became subject to the new provision in sect. 123 (1) of the L.G.A., 1933, and is required to give written notice to the council, if it comes to his knowledge that a contract in which he has any direct or indirect pecuniary interest has been or is proposed to be entered into by the council, or any committee of the council. The notice must be given as soon as practicable, should state that he is pecuniarily interested, and describe the contract in which he has such interest. A contract to which the clerk is himself a party need not, however, be notified.

In deciding whether an indirect pecuniary interest exists, it should be noted that sect. 123 (1) applies sect. 76 (2) and (3) of the Act, which relate to the interest in contracts of members of councils.

Sect. 123 (2) of the Act, which forbids an officer of a local authority, under colour of his office or employment, to exact or accept any fee or reward (g) whatsoever, other than his proper remuneration, extends to the clerk of a parish council.

The penalty for a failure to give notice under sub-sect. (1) of sect. 123, or for a contravention of sub-sect. (2) is a fine not exceeding £50 recoverable before the justices.

It is desirable that a clerk who feels any doubt whether he has or has not a pecuniary interest in a contract should take the safe course of giving the notice required by the section. It can do no harm. [506]

London.—Parish councils do not exist in London. [507]

(g) As to the meaning of these words, see *Edwards v. Salmon* (1889), 23 Q. B. D. 581; 33 Digest 17, 61.

CLERK OF THE PEACE

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See also titles :

APPEALS TO THE COURTS ;
CLERK OF THE COUNTY COUNCIL ;
COSTS ;
COSTS IN CRIMINAL CASES ;

CUSTOS ROTULORUM ;
DUTIES AND POWERS OF OFFICERS ;
RECORDS AND DOCUMENTS ;
SUPERANNUATION.

(1) **Introductory.**—The office of clerk of the peace of a county is one of considerable antiquity. He was appointed by the *Custos Rotulorum* for the keeping of the rolls of the county, and in that capacity attended the justices of the peace of the county when they assembled in general sessions. Originally the appointment was for the period of office of the *Custos*, subject to the just and honest behaviour of the clerk in his office (a). The same statute provided that the clerk of the peace should be an able person, learned in the laws of this realm. By 1 Will. & M. c. 21, sect. 4 (b), the appointment ceased to be dependent on the continuance in office of the *Custos Rotulorum*, and was held by the clerk subject to good behaviour in the execution of his office. The Clerks of the Peace Removal Act, 1864 (repealed by Statute Law Revision (No. 2) Act, 1893), provided for the removal of a clerk of the peace proved guilty of misconduct otherwise than in the execution of his office, and rendering him unfit to hold his appointment.

Gradually the clerk of the peace became the principal administrative officer of his county, as in addition to attending to the purely judicial duties of general and quarter sessions, he became the centre of the county administration as it existed before the creation of county councils under the L.G.A., 1888 (c), e.g. the administrative work in connection with highways, county bridges, diseases of animals, weights and measures, coroners' districts, polling districts, reformatories, stage plays, county rate, etc.

The L.G.A., 1888 (d), added to the duties of the clerk of the peace, the duties of clerk of the county council, and transferred the power of appointment and removal from the *Custos Rotulorum* to the standing joint committee of quarter sessions and the county council, but did not alter the tenure of the office (e). By sect. 64 of the same statute (f), property held by the clerk of the peace for the purposes of a county, e.g. property conveyed to or vested in the clerk of the peace under

(a) 37 Hen. 8, c. 1 ; 13 Statutes 410.

(b) 13 Statutes 412.

(c) S. 1 ; 10 Statutes 686.

(d) S. 83 ; 10 Statutes 753.

(e) *Leconfield (Lord) v. Thornely*, [1926] A. C. 10 ; 33 Digest 377, 863.

(f) 10 Statutes 738.

the County Property Act, 1853 (g), was vested in the county council. This vesting did not affect then existing records of, or in the custody of, the court of quarter sessions, except as ordered by the court.

The position of clerks of the peace of counties was considered judicially in 1925 (*Leconfield (Lord) v. Thornely, supra*), but the subsequent L.G. (Clerks) Act, 1931 (h), substantially amended the law governing appointments and tenure of office. It should be noted that several of the provisions of this Act which apply to clerks of county councils have been repealed by the L.G.A., 1933. The general result is that the Act of 1931 is restricted to provisions which relate primarily to clerks of the peace of counties and to their deputies and staff, while the corresponding provisions as to clerks of county councils and their deputies will be found in sects. 98—101, 105, 115, 116, 121 and 124 of the L.G.A., 1933 (i).

The appointment, and removal, of the clerk of the peace of a borough having a separate court of quarter sessions formerly vested in the Recorder, but is now governed by the Municipal Corpn. Act, 1882.

The clerk of the peace is an officer of the Crown, and as such officer is given security of tenure; his duties are duties to the public, although in certain matters he is subject to the directions of the *Custos Rotulorum* and of the court of quarter sessions. [508]

(2) **Appointment and Qualifications.** (a) *L.G. (Clerks) Act, 1931 (h)*.—This Act, which applies to clerks of the peace of counties only and not to borough clerks of the peace, separated the office of clerk of the county council from that of clerk of the peace; but a person holding both offices immediately before July 31, 1931, continued to hold the two separate offices. The present procedure on a vacancy occurring in the office of clerk of the peace is that the appointment is filled by the court of quarter sessions, but the office may still be linked with that of clerk of the county council, and for this purpose the county council must, when appointing their clerk, ascertain whether he would be willing to accept the office of clerk of the peace, and shall consider, in consultation with the chairman of quarter sessions, his fitness for that office (L.G.A., 1933, sect. 98). On the office of clerk of the peace becoming vacant the county council must inform the court of quarter sessions whether the person appointed to be clerk of the county council would be willing to accept the office of clerk of the peace. If the clerk of the county council is willing to act as clerk of the peace he is deemed to have been so appointed, unless within six months of the vacancy occurring, quarter sessions appoints some other person as clerk of the peace. The Home Secretary may extend the period of six months (L.G. (Clerks) Act, 1931, sect. 2 (3), (4)). [509]

(b) *Borough Clerks of the Peace*.—In boroughs having a separate court of quarter sessions the clerk of the peace for the borough is appointed by the borough council. He holds office during good behaviour, and may appoint his own deputy. The borough council may make, and vary, subject to the approval of the Home Secretary, a table of fees to be taken by the clerk of the peace (Municipal Corpn. Act, 1882, sect. 164) (j). [510]

(c) *General*.—There are no statutory qualifications for the appointment of clerk of the peace; but the nature of his duties and the importance of the office demand a high standard of legal qualifications and

(g) Repealed by Statute Law Revision Act, 1892.

(h) 24 Statutes 240.

(i) 26 Statutes 358 *et seq.*

(j) 10 Statutes 630.

experience. He, or his partner or deputy, cannot be a salaried clerk to justices (*k*). He should take care not to be concerned professionally, whether directly or indirectly, in matters coming before quarter sessions (*l*) when he sits as clerk of the court. Where arrangements are made for an independent person (usually a member of the Bar) to sit as clerk of the court before which such matters are dealt with, there would appear to be no violation of principle. The position is illustrated by the Rules made under sect. 84 of the R. & V.A., 1925, with respect to the practice and procedure to be followed in connection with appeals under Part II. of the Act. Rule 14 provides that in any case where the clerk is also an officer of any authority or committee which is a party to an appeal, the chairman of the court or the Recorder, as the case may be, shall appoint some independent person, being a barrister or a solicitor, to act in lieu of the clerk upon the hearing by the court of such appeal. [511]

(3) **Salary and Remuneration.** (a) *In Counties.*—The salaries of clerks of the peace holding office immediately before July 31, 1931, continue to be merged in a single salary in respect of the two offices of clerk of the peace and of the county council, and are regulated by order of the Home Secretary under the Criminal Justice Administration Act, 1951, sect. 9 (*m*). The salary fixed by the order no longer includes the remuneration of deputies and staff, and may be varied on a recommendation of the standing joint committee.

In the case of an appointment made on or after July 31, 1931, the salary is fixed by quarter sessions, subject to an appeal to the Home Secretary, either by the county council or by the clerk of the peace (L.G. (Clerks) Act, 1931, sect. 3). If the clerk of the peace is not also clerk of the county council it seems that the salary should include the remuneration of staff, other than the salary of a deputy clerk, as no other provision appears to be made for the appointment and payment of staff in such cases.

In either case the salary is payable by the county council out of the county fund (L.G. (Clerks) Act, 1931, sect. 3 (1)). All fees and costs received by the clerk of the peace, and not expressly excluded when the salary is fixed, must be paid into the county fund (sect. 3 (3)).

The fees to be taken by the clerk of the peace are fixed by quarter sessions, subject to approval by the Home Secretary; the powers of the standing joint committee in relation to the table of fees appear to be discontinued by the repeal of the L.G.A., 1888, sect. 83 (5) (*n*), contained in the L.G. (Clerks) Act, 1931. [512]

(b) *In Boroughs.*—The table of fees in quarter sessions boroughs is fixed by the borough council (subject to the approval of the Home Secretary), but a borough clerk of the peace may be remunerated by salary, in which event the fees are to be paid by him into the borough fund. The salary of a clerk of the peace of a borough is paid out of the borough fund (*o*). [513]

(*k*) See s. 7 of the Justices Clerks Act, 1877 (11 Statutes 322), and s. 159 of the Municipal Corporns. Act, 1882 (10 Statutes 628).

(*l*) Cf. observations of Lord HEWART, L.C.J., in *R. v. Ely JJ., Ex parte Mann* (1928), 93 J. P. 45; Digest (Supp.).

(*m*) 4 Statutes 525.

(*n*) 10 Statutes 754. See also Summary Jurisdiction Act, 1848, s. 80; 11 Statutes 288.

(*o*) Criminal Justice Administration Act, 1951, ss. 9–11; 4 Statutes 525, 526.

(4) **Duties.**—The duties of clerk of the peace are to perform all ministerial acts necessary for the conduct of the business of the justices in general and quarter sessions. He arranges for the issue of the precept to the sheriff and for notices of the sittings; he records the proceedings of the court and issues the orders. It is his duty to draw and sign (*p*) bills of indictment unless the prosecutor elects to get professional advice, in which case he passes and signs the bill. He is empowered to issue writs of subpoena requiring the attendance of witnesses at quarter sessions; a writ of attachment will not issue in the King's Bench Division in respect of a subpoena issued by a clerk of the peace, which differs in this respect from a Crown office subpoena. Disobedience to a subpoena issued by a clerk of the peace may be punished by fine imposed by quarter sessions, or on conviction on indictment (*q*). He is responsible for rendering to the sheriff the estreat roll and returns of fines.

He is the adviser of the court on points of law and practice; generally he settles the fees and allowances ordered to be paid out of the county fund in respect of prosecutions, and of defences of poor persons (see title COSTS IN CRIMINAL CASES). He taxes, usually out of sessions, costs ordered to be paid in appeals and cognate matters.

The clerk of the peace is by virtue of his office clerk to the licensing committee which exercises the functions of the court of quarter sessions as confirming authority (for new liquor licences) and as compensation authority (for refusing renewal of old liquor licences) (*r*). This does not apply to clerks of the peace in county boroughs, where the clerk to the justices is clerk to the licensing committee.

He is also clerk of the committee set up by the court to hear rating appeals (*s*). When the clerk of the peace is also (*e.g.* as clerk of the county council) an officer of any committee or authority which is a party to an appeal, the chairman of the committee appoints some independent person to act in lieu of the clerk.

He is also clerk of the committee which exercises the functions of the court under the L.G. (Clerks) Act, 1931, as to the clerk and deputy clerk of the peace. This committee consists of the chairman of the court and the justices appointed by the court to be members of the standing joint committee of quarter sessions and the county council (*t*).

The clerk of the peace may (but need not) be appointed clerk to the visitors of private mental hospitals and of defectives under guardianship in the county. The visitors are appointed by the court and they may appoint their own clerk (*u*).

The clerk of the peace of a county is clerk to the appeal committee of quarter sessions, constituted under the Summary Jurisdiction (Appeals) Act, 1933 (*v*).

The clerk of the peace is the responsible officer for dealing with certain administrative duties of quarter sessions. He receives the annual returns of members of secret societies (in practice the lists of members of freemasons' lodges) (*w*). He lays before quarter sessions

(*p*) Admn. of Justice (Misc. Provisions) Act, 1933, s. 2; 26 Statutes 81.

(*q*) *R. v. Judge, Ex parte Ely JJ.* (1931), 95 J. P. 97; Digest (Supp.).

(*r*) Licensing (Consolidation) Act, 1910, s. 6; 9 Statutes 989; Licensing Rules, 1910, r. 48.

(*s*) Rating and Valuation Assessment Appeals Rules, 1927, r. 2.

(*t*) L.G. (Clerks) Act, 1931, s. 12; 24 Statutes 251.

(*u*) Lunacy Act, 1890, s. 178; 11 Statutes 80.

(*v*) S. 7 (5); 26 Statutes 553.

(*w*) Unlawful Societies Act, 1799, s. 6; 4 Statutes 405.

the periodical returns of the state of the Police Force. In many counties, appointments on bodies of commissioners for public utility undertakings, and other like appointments are made by quarter sessions; the duties of the clerk of the peace include securing the making of such appointments. He also receives returns of fines and estreats imposed by coroners, and incorporates them in his estreat roll.

Subject to the directions of the *Custos Rotulorum*, the clerk of the peace has the custody of the records of quarter sessions, and of such other county records as have not passed to the clerk of the county council (L.G. (Clerks) Act, 1931, s. 5) (3).

In performing his duties the clerk of the peace acts in accordance with the directions of quarter sessions (L.G. (Clerks) Act, 1931, sect. 5 (2)).

The clerk of the peace can be called upon to tax the bill of costs due to any solicitor in respect of legal work performed on behalf of the council of any non-county borough or district in the county (x). This duty is limited to costs for work performed on behalf of the council; it does not include all costs payable by them, e.g. the costs of the solicitor to the vendor of land purchased by the council. These costs could, however, be taxed under the Solicitors' Act, 1932, sect. 67 (a). See also the Lands Clauses Consolidation Act, 1845, sect. 83 (b).

The allowance of costs on taxation by the clerk of the peace is *prima facie* evidence of the reasonableness of the amount, but not of the legality of the charge; thus a clerk of the peace is not concerned to inquire whether the solicitor has received a proper retainer, or whether the instructions given to him are authorised by the local authority; this may be a matter of great importance where a solicitor, who is also clerk of the authority, charges for legal work, and the certificate of the clerk of the peace would not prevent the district auditor from disallowing payments where no proper retainer is established. It may be that the clerk of the peace is not, strictly speaking, entitled to inquire whether notice was given where a solicitor elects to charge for conveyancing work under Sched. II. to the Solicitors Remuneration General Order, 1882 (c), but in practice it seems necessary to obtain this information in order that the clerk of the peace may know on what scale the bill should be taxed.

The view of the M. of H. appears to be that, except in trifling matters, costs which are properly taxable by a Parliamentary taxing officer should be so taxed, and in the case of costs relating to litigation the proper course is for party and party costs to be taxed by the taxing officer of the court, and for solicitor and client costs, excluded from such taxation, to be taxed by the clerk of the peace.

The fees to be taken by the clerk of the peace for taxing local authorities' bills are at the rate of 6d. per folio of 72 words (d). [514]

(5) **Termination of Office.**—A clerk of the peace of a county appointed after July 31, 1931, solely to that office without at the same time being clerk of the county council does not vacate his office on attaining the age of 65 years. Apart from voluntary resignation, the office becomes vacant on his becoming incapable through permanent ill-health, but is

(x) L.G.A., 1933, s. 242; 26 Statutes 436.

(a) 25 Statutes 828.

(b) 2 Statutes 1141.

(c) S.R. & O. (Rev.), Vol. XI., Solicitor (E.), p. 1.

(d) Clerk of the Peace (Taxation Allowance) Order, 1922 (S.R. & O., 1922, No. 987).

otherwise subject to determination only in the event of misconduct, in the execution of his office or otherwise, which the court of quarter sessions considers renders him an unfit or improper person to hold the office (L.G. (Clerks) Act, 1931, sect. 4).

The clerk has a right of appeal to the High Court if he is dismissed by the court of quarter sessions on the ground of misconduct (otherwise than in the execution of his office).

A clerk of the peace who also holds the office of clerk of the council vacates both offices on resignation of one of them (*ibid.*, sect. 4 (1)). Where the office of clerk of the peace is so vacated, the person resigning is ineligible for reappointment to that office (sect. 4 (3) as in part repealed by the L.G.A., 1933). On the other hand, if a holder of both offices resigns the office of clerk of the peace, he thereby vacates also the office of clerk of the county council under sect. 100 (2) of the L.G.A., 1933, but is eligible for reappointment to that office. This alteration of the law was made on the consideration of the Local Government Bill by a Joint Committee of both Houses, as it was said that there were cases in which a holder of both offices might desire to surrender the clerkship of the peace, so as to reduce the work devolving upon him, while not wishing to give up the clerkship of the county council.

The office of clerk of the peace terminates with that of clerk of the county council on the officer attaining the age of 65 years unless the period of both offices is extended (with his consent) by the court of quarter sessions and the county council (L.G.A., 1933, sect. 100 (3)). If the county council dismiss him as clerk of the county council, it would seem that he retains the office of clerk of the peace by the same tenure thenceforward as if he had been appointed to that office only.

In this connection it should be observed that whilst under sect. 4 (7) of the Act of 1931 a clerk of the peace holds office during good behaviour, a clerk of the county council holds office during the pleasure of the council, subject to the consent to his dismissal of the Minister of Health (e).

A clerk of the peace who held office on July 31, 1931, continues to hold that office, with the office of the clerk of the council, at a single salary, and matters relating to his joint office continue to be dealt with by the standing joint committee. Under sect. 4 (2) of the Act of 1931, his office becomes vacant on his becoming incapable, by reason of permanent ill-health, of discharging the duties of either the office of clerk of the peace or clerk of the county council, and he may be required by the standing joint committee to vacate office on or after attaining the age of sixty-five years. He holds office in both capacities during good behaviour. If he is dismissed from the office of clerk of the peace for misconduct, other than in the execution of that office, he can appeal to the High Court (f). For the purposes of dismissal for misconduct, either in the execution of the office, or otherwise, and of the appeal to the High Court, the offices of clerk of the peace and clerk of the county council are deemed to be one office, in the cases of persons appointed to the combined office before July 31, 1931 (f).

The office of clerk of the peace of a borough is tenable during good behaviour, and he can only be removed on account of misconduct duly charged and proved (g). [515]

(6) **Superannuation.**—A clerk of the peace (whether of a county or

(e) L.G.A., 1933, s. 100 (1); 26 Statutes 359.

(f) L.G. (Clerks) Act, 1931, s. 4 (5); 24 Statutes 244.

(g) Municipal Corpn. Act, 1882, s. 164 (2); 10 Statutes 680.

a borough) holding that office only does not come within any superannuation scheme. If he has previously held the office of clerk of the county council in conjunction with the office of clerk of the peace and has been dismissed from the office of clerk of the county council only, any subsequent period of service as clerk of the peace only does not count for superannuation purposes, although while holding both offices he came within a scheme, but while he holds both offices his remuneration as clerk of the peace is deemed an addition to his remuneration as clerk of the county council for purposes of superannuation (L.G. (Clerks) Act, 1931, sect. 9 (2)).

The position of persons holding both offices is further dealt with under the title CLERK OF THE COUNTY COUNCIL. [516]

(7) **Deputies and Staff.** (a) *Deputy Clerk.*—A person who, before July 31, 1931, held office as deputy clerk of the peace of a county in conjunction with the office of deputy clerk of a county council is deemed to have been appointed to both offices, but subject to the same terms as to notice as on his original appointment. His remuneration is to be apportioned between the two offices, where necessary, by the standing joint committee (L.G. (Clerks) Act, 1931, sect. 7 (3)).

Subject to the foregoing protection for existing officers, a court of quarter sessions for a county can appoint a deputy clerk of the peace, at such remuneration as they may fix, subject to an appeal by the county council to the Home Secretary. The remuneration is payable out of the county fund (L.G. (Clerks) Act, 1931, s. 7).

Under sect. 83 (4) of the L.G.A., 1888 (*h*), as amended by sect. 7 (1) of the L.G. (Clerks) Act, 1931, a deputy clerk of the peace holds office during the pleasure of quarter sessions, and as the court of quarter sessions is not a local authority, as defined in sect. 305 of L.G.A., 1933, sect. 121 of that statute does not apply to his office, and he may be dismissed without notice, notwithstanding any agreement to the contrary (cf. *Brown v. Dagenham U.D.C.*) (*i*).

A deputy clerk of the peace of a county is not entitled to superannuation, unless he holds his appointment in conjunction with a designated post under the county council (L.G. (Clerks) Act, 1931, sect. 10).

A deputy clerk of the peace, who was also deputy clerk of a county council, and occupied those posts as designated posts before July 31, 1931, is deemed to continue to occupy a designated post in respect of both offices (*ibid.*).

The remuneration of any other officer occupying a designated post under a county council, who is also deputy clerk of the peace, is deemed to be increased for superannuation purposes by the amount of his remuneration as deputy clerk of the peace. Provision is made for a reduced superannuation allowance where such an officer continues as deputy clerk of the peace after ceasing to hold the designated post, and for the return of contributions where he ceases to be deputy clerk of the peace before becoming entitled to superannuation allowance (*ibid.*).

A deputy clerk of the peace for a county appointed under sect. 83 (4) of the L.G.A., 1888 (*k*), acts in lieu of the clerk in case of his death, illness or absence, or in such other cases as may be determined by the quarter sessions, and wherever he so acts has all the powers of the clerk of the peace. In this enactment, the quarter sessions were

(h) 10 Statutes 753.

(k) 10 Statutes 753.

(i) [1929] 1 K. B. 737 ; Digest (Supp.).

substituted for the standing joint committee by sect. 7 (1) of the L.G. (Clerks) Act, 1931 (*l*).

In quarter sessions boroughs the clerk of the peace may appoint his own deputy, and must notify the borough council of the appointment, which is to be recorded in their minutes (Municipal Corporations Act, 1882, sect. 164 (3)) (*m*).

In counties and boroughs the additional power of appointing deputies contained in the Recorders, Stipendiary Magistrates and Clerks of the Peace Act, 1906, sect. 1 (*n*), still applies, and the court of quarter sessions or the borough council, as the case may be, can make a temporary appointment if the clerk of the peace dies, or the office becomes vacant and there is no duly-appointed deputy willing to act. Similarly, the quarter sessions or the borough council may appoint a deputy if it appears to them that the clerk of the peace is unable, owing to illness, absence, or other cause, to appoint a deputy, and may assign a salary to the deputy out of the remuneration of the clerk of the peace.

The same statute enables the deputy clerk of the peace (whether of a county or of a borough) to exercise the office of clerk of the peace temporarily, on a vacancy occurring, pending a new appointment, but this temporary power is limited to six months. [517]

(b) *Staff*.—If the clerk of the peace of a county is also clerk of the county council, the county council must appoint such staff as the council thinks necessary, to assist the clerk of the peace in carrying out his duties; this staff forms part of the staff of the county council, and receive out of the county fund such salaries as the council may fix (L.G. (Clerks) Act, 1931, sect. 8). Apart from the foregoing provisions, there is no general statutory power of appointing and paying staff, other than deputies; the terms of appointment of a county clerk of the peace, who is not also clerk of the county council, or of a borough clerk of the peace, should include arrangements for the appointment and payment of staff by the clerk of the peace.

Subject to protection for officers who immediately before July 31, 1931, occupied a designated post under a county council, the L.G. and other Officers' Superannuation Act, 1922 (*o*), does not apply to a person in the permanent employment of a clerk of the peace of a county, for the purposes of that office (L.G. (Clerks) Act, 1931, s. 10 (3)). Persons in the permanent employment of a borough clerk of the peace do not appear to have been eligible at any time to occupy a designated post for superannuation purposes in respect of their employment by the clerk of the peace, but it would seem that where a town clerk is also clerk of the peace, persons occupying designated posts in the service of the borough council, who assist the clerk of the peace in his duties as such, should contribute to the superannuation fund in respect of, and receive pensions based upon, their total remuneration from the borough council; it is doubtful whether remuneration received by such persons from the clerk of the peace should be aggregated for superannuation purposes with the officers' emoluments from the borough council. [518]

London.—The L.G. (Clerks) Act, 1931, does not apply to the administrative County of London (*p*).

In the City of London the Common Council appoint the clerk of the peace for the city.

(l) 24 Statutes 246.

(n) 11 Statutes 364.

(p) S. 16; 24 Statutes 253.

(m) 10 Statutes 630.

(o) 10 Statutes 863.

The clerk of the peace for the County of London, exclusive of the city, must be a separate officer from the clerk of the L.C.C. (g), and, subject to the directions of the quarter sessions, has charge of and is responsible for the records and documents of those sessions and of the justices out of session. The terms of appointment of the clerk of the peace for London were laid down in sect. 27 of the L.C.C. (General Powers) Act, 1930 (r). [519]

(g) L.G.A., 1888, s. 83 (11); 10 Statutes 754.

(r) 23 Statutes 357.

CLERK OF THE RURAL DISTRICT COUNCIL

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See also titles :

APPOINTMENT AND DISMISSAL OF OFFICERS ;
CLERK OF U.D.C. ;
COMPENSATION FOR LOSS OF OFFICE ;
DUTIES AND POWERS OF OFFICERS ;
FINANCIAL OFFICER ;

INQUIRIES ;
RATING AND VALUATION OFFICERS ;
RETURNING OFFICER ;
STAFF ;
SUPERANNUATION ;
TRANSFER OF OFFICERS.

Introduction.—The clerk is the chief administrative officer of the R.D.C. When rural district councils were established by the L.G.A., 1894 (a), the then clerk to the guardians who had been clerk to the rural sanitary authority usually continued under sect. 81 of the Act (b) as clerk of the R.D.C.

A considerable proportion of the clerks of rural district councils were consequently part-time officers, and in point of fact were solicitors who were also engaged in private practice. In more recent times the part-time clerk of a R.D.C. has in many instances given way to a whole-time officer, and with the formation of larger rural districts by the Review Orders under the L.G.A., 1929 (c), the part-time clerk will become still less common. [520]

The second paragraph of sect. 190 of the P.H.A., 1875 (d) contemplated that the clerk to the guardians would act as clerk of the rural authority, and on the constitution by the L.G.A., 1894, of rural district councils as bodies corporate separate from the boards of guardians, no provision was included in that Act, authorising an R.D.C. to appoint a clerk, and the appointment of a clerk was made under the general provision in the first paragraph of sect. 190 of the P.H.A., 1875 (d), which authorises the appointment of such other officers and servants, in addition to the M.O.H., as may be necessary and proper for the efficient execution of that Act.

The position is now clarified by sect. 107 (1) of the L.G.A., 1933 (e), which requires every district council to appoint a fit person to be clerk of the council. Sect. 190 of the Act of 1875 is repealed by the Act of 1933, but under proviso (v.) to sect. 307 (1) of the Act (f) any appointment made under an enactment so repealed is not to be affected, and

(a) S. 21 (2); 10 Statutes 792; repealed by the L.G.A., 1933, Sched. XI., Part IV.; 26 Statutes 528.

(b) 10 Statutes 824.

(c) S. 46; 10 Statutes 916.

(d) 13 Statutes 708.

(e) 26 Statutes 362.

(f) *Ibid.*, 469.

is to have effect as if it had been made under the corresponding provision in the Act of 1933 (g). Moreover, nothing in Part IV. of the Act (Officers) is to affect the salary or tenure of office of any officer of a local authority holding office on June 1, 1934, subject, however, to the provision validating an existing agreement between the council and the officer providing for reasonable notice being given by either party before the appointment is terminated (h). [521]

Qualification.—There is no statutory qualification for the office other than that of being a fit person (i). But the offices of clerk of the council and treasurer may not be held by the same person, or by persons who stand in relation to one another as partners, or as employer and employee (k). And by sect. 122 of the Act of 1933, a person so long as he is a member of an R.D.C., and for twelve months after he ceases to be a member, is disqualified for being appointed by that council to a paid office. A chairman elected from outside the council is a member of the council by virtue of sect. 33 (4) of the Act.

The Departmental Committee on the qualification, recruitment, training and promotion of Local Government Officers (l) came to the conclusion that the essential qualification of the clerk is administrative ability. "He should be a person of broad and constructive outlook, interested in the wider issues of local government, skilled in negotiation and he should ordinarily have had experience of administrative work." The committee did not, however, consider that a legal qualification should always be a condition of appointment as clerk to a local authority, particularly to a large local authority. Their Report continues: "Small and medium-sized authorities are, no doubt, well advised to prefer candidates possessing legal qualifications, but we think that it would be regrettable if any local authority, otherwise provided with adequate legal assistance, were to refrain from appointing as clerk a person of proved administrative ability simply because he was not a solicitor or a barrister." Further, in order to secure that sufficient officers of administrative ability should be available the committee recommended that local authorities should broaden the basis of recruitment, provide training in administration for junior officers and encourage the study of the principles of administration.

One solution is that the council should arrange for its legal business to be done in a separate department, but until there is some recognised qualification by examination for clerks, apart from a legal qualification, the status of the clerk as the principal officer of the council would alone appear to make the legal qualification unavoidable in the case of rural district councils. [522]

Appointment.—When a vacancy occurs in the office it should be advertised, unless it is intended that another officer of the council should be promoted to fill the post (see p. 20 of the Report of the Departmental Committee already mentioned). The advertisement usually prescribes a maximum age for candidates and stipulates that the successful candidate should undergo a medical examination. The latter requirement is important in view of eventual superannuation.

The L.G.A., 1933 (m), now authorises an agreement between the

(g) In this instance, s. 107; 26 Statutes 362.

(h) Ss. 121 (1) and 124 (1); *ibid.*, ss. 370, 372.

(i) L.G.A., 1933, s. 107 (1); 26 Statutes 362.

(k) *Ibid.*, s. 107 (4); *ibid.*

(l) See Report dated January 10, 1934, No. 32—306. It should be understood that this is merely a Report of a Departmental Committee on which subsequent action may or may not be taken.

(m) S. 121 (1); 26 Statutes 370.

council and their clerk that the appointment shall not be terminated by either party without giving to the other party such reasonable notice as may be agreed, and it should be stated in the advertisement whether or not it is proposed that an agreement for notice should be made with the officer. Subject to any such condition, the clerk holds office during the pleasure of the council (*n*), but this does not affect any right or obligation of the officer to retire on attaining any specified age or on the happening of any specified event in pursuance of any enactment or scheme relating to superannuation allowances which may be applicable to him (*o*).

If the clerk is likely to be entrusted with money the council must either require him to give or themselves take security, but the council may if they think fit defray the cost of such security (*p*).

The canvassing of members should always be considered a disqualification, and the Departmental Committee on the Qualifications, etc., of Local Government Officers recommend, on p. 21 of their recent Report, that all councils should provide by standing order that canvassing for any appointment will disqualify the candidate and should see that this standing order is observed. [523]

As to the procedure in selecting candidates and in voting on the appointment, see the title APPOINTMENT AND DISMISSAL OF OFFICERS, Vol. I., pp. 342, 343.

Functions.—The functions of a clerk of an R.D.C. are very similar to those of the clerk of an U.D.C. (see that Title). It has been pointed out that he is the chief administrative officer to whom the council will look for advice generally. He is the channel of the council's correspondence, and he should exercise a general supervision over the work of all departments of the council without unduly interfering with strictly technical questions. To avoid friction arising, very considerable tact is necessary and the work will give full opportunity for the exercise of administrative ability. The clerk, in addition to an extensive knowledge of the law of Public Health, should also be familiar with the general principles of local government finance, and unless the council run a legal department, the preparation of contracts, conveyances and other documents will from time to time be required of him. He may also have to act as an advocate in proceedings before the justices in petty sessions, although not a solicitor, but before he can appear there on behalf of his council he must be authorised, either generally or specially, by resolution (*q*). He acts as local registrar under the Land Charges Act, 1925 (*r*), and is Returning Officer at R.D.C. elections (*s*).

It will also be the duty of the clerk to prepare the case for the council at any inquiry held by an Inspector of the M. of H., or by the county council, and unless his authority are represented by counsel, he will have to appear at the inquiry on their behalf (see title INQUIRIES). Other duties which may be subject to his supervision are those of the financial officer and rating officer.

It is quite usual for the clerk not to attend committee meetings of the council, unless his attendance is specially required, the duties of committee clerk being undertaken by a subordinate officer. When, however, a parish council act as a parochial committee by delegation from

(*n*) S. 107 (2); 26 Statutes 362.

(*o*) S. 121 (2); *ibid.*, 371.

(*p*) S. 119; *ibid.*, 369.

(*q*) L.G.A., 1933, s. 277; 26 Statutes 452. Under s. 259 of the P.H.A., 1875, which was repealed as from June 1, 1934, no authorisation of the clerk by a resolution of the council was necessary.

(*r*) Art. 4; Local Land Charges Rules, 1934, S.R. & O., 1934, No. 285/24.

(*s*) Art. 1; R.D.C. Election Rules, 1934, S.R. & O., 1934, No. 546.

the R.D.C., the parish council are entitled to the services of the clerk of the district council unless the district council otherwise direct (t). [524]

Interest in Contracts.—Sect. 193 of the P.H.A., 1875, the P.H. (Officers) Act, 1884, and the P.H. (Members and Officers) Act, 1885, are repealed by the L.G.A., 1933.

Sect. 123 (2) of the L.G.A., 1933 (u), provides that an officer of a local authority shall not under colour of his office or employment, exact or accept any fee or reward whatsoever (a) other than his proper remuneration.

By sub-sect. (1) of the section, an officer is required to give notice in writing to his council, if it comes to his knowledge that a contract in which he has any pecuniary interest, whether direct or indirect, has been, or is proposed to be, entered into by the council, or any committee of the council. Notice is not, however, necessary if the officer is himself a party to the contract.

The point whether an officer has or has not an indirect pecuniary interest in a contract may often be one of difficulty, and sect. 123 (1) of the Act requires a similar test to be applied to the solution of this question to that prescribed by sect. 76 (2) and (3) of the same Act, as respects the indirect interest of councillors in contracts. It is suggested that if any doubt should be felt by the officer, he would do well to give the requisite notice.

A failure to comply with sub-sect. (1) of the section, or a contravention of sub-sect. (2), will render the officer liable, on summary conviction, to a fine not exceeding £50. This fine is similar to that provided for by sect. 193 of the P.H.A., 1875 (b), but that section also went on to disqualify the officer for holding or continuing in any office or employment under that Act. This severe provision has not been re-enacted in the L.G.A., 1933, and disappeared on the repeal of sect. 193 by that Act. [525]

Penal Provisions.—The following table of penalties to which a clerk may be liable under the L.G.A., 1933, on a conviction, is a further indication of the responsibilities attaching to the office.

	£
S. 79. Failure of Returning Officer to conduct election (c)	Penalty 100
S. 123. Failure to disclose an interest in a contract, or exaction or acceptance of improper fee or reward — —	50
S. 199 (5). Failing to furnish a return asked for by the M. of H. as to repayment of moneys borrowed — —	20
S. 207 (7). Refusing inspection of mortgage register — —	5
Wilfully neglecting to make an entry in the mortgage register — — — — —	20
S. 222 (5). Failing to prepare and submit to the district auditor a financial statement — — — — —	20
S. 224 (2). Failing to make up accounts for audit — —	5
S. 225. Failing to produce books, documents, etc., required by district auditor — — — — —	2
S. 235. Wilful neglect or disobedience of audit regulations of the M. of H. — — — — —	5
Subsequent offences — — — — —	20
S. 246. Failure to make a local financial return — —	20
S. 280 (3). Obstructing inspection of documents deposited with clerk under Parliamentary standing orders, etc. — —	5
S. 283 (7). Obstructing inspection of minutes and other documents — — — — —	5

[526]

(t) L.G.A., 1933, s. 114 (3).

(u) 26 Statutes 371.

(a) As to the meaning of these words, see *Edwards v. Salmon* (1889), 23 Q. B. D. 581; 38 Digest 17, 61.

(b) 18 Statutes 709.

(c) See also s. 80 (Offences in relation to Nomination Papers) and s. 81 (Offences in relation to Ballot Papers and Ballot Boxes).

Deputy Clerks.—The L.G.A., 1933, provides for the appointment of a standing deputy clerk (*d*), and of a temporary deputy clerk (*e*), whenever the office of clerk is vacant or the holder is for any reason unable to act. Subject to the terms of the appointment, a deputy is endowed with all the functions of the holder of the office. [527]

(*d*) L.G.A., 1933, s. 115 ; 26 Statutes 367.
(*e*) *Ibid.*, s. 116.

CLERK OF THE URBAN DISTRICT COUNCIL

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See also titles :

APPOINTMENT AND DISMISSAL OF OFFICERS ;	LOCAL LAND CHARGES ;
CLERK OF R.D.C. ;	RATING AND VALUATION OFFICERS ;
COMPENSATION FOR LOSS OF OFFICE ;	RETURNING OFFICER ;
DUTIES AND POWERS OF OFFICERS ;	STAFF ;
FINANCIAL OFFICER ;	SUPERANNUATION ;
INQUIRIES ;	TRANSFER OF OFFICERS.

Introduction.—While the clerk of an U.D.C. does not hold an office equal in status by antiquity to that of the town clerk of a borough, he has heavy responsibilities and arduous duties to perform, according to the population and activities of his district.

In practice, the position of clerk of an U.D.C. varies, according to the size of the district. The larger councils invariably employ a full-time officer, but the smaller ones a part-time one. Before the Great War, it was quite usual to appoint a local solicitor as clerk at a small salary and to retain him for all legal business of the council for which he would be paid on rendering bills of costs. This was an undesirable arrangement from both points of view, as it may be difficult to distinguish between clerical work and legal work. It is much more satisfactory to make the appointment at an inclusive salary, covering general legal work, but not exceptional business, such as High Court actions and Parliamentary proceedings.

Hitherto the appointment has been made under sect. 189 of the P.H.A., 1875 (a), which required every urban authority from time to time to appoint a fit and proper person to be clerk. Any officer might be paid such reasonable salaries, wages or allowances as the authority might think proper. Apart from medical officers of health and sanitary inspectors, every officer appointed under the Act was to be removable by the authority at their pleasure. This section is repealed by the L.G.A., 1933, and sect. 107 (1) of that Act requires every district council to appoint a fit person to be clerk of the council. But under proviso (v.) to sect. 307 (1) of the Act, any appointment made under sect. 189 of the Act of 1875 is not to be affected, and is to have effect as if it had been made under the corresponding provisions in the Act of 1933, viz. in this instance under sect. 107. Moreover, by sect. 124 (1) of the Act, nothing in Part IV. of the Act (Officers) is to affect the salary or tenure of office of any officer of a local authority holding office on June 1, 1934, subject, however, to the provision in sect. 121 (1) of the Act validating an existing agreement between the council and the officer providing for reasonable notice being given by either party before the appointment is terminated. This provision supersedes the case of *Brown v. Dagenham U.D.C.* (b), in which it was decided that such a stipulation did not bind the council. [528]

If the clerk be a solicitor, and he is allowed to charge for legal work, his bill of costs may, on the application of the council, be taxed by the clerk of the peace for the county, but although the decision of the clerk of the peace is *prima facie* evidence of the reasonableness of the amount, he does not decide the legality of the charge (L.G.A., 1933, sect. 242). This question may be raised by the district auditor at the annual audit of the council's accounts, either on his own initiative or in response to an objection by a ratepayer, if based on adequate grounds. In practice, the district auditor usually accepts the taxation of the clerk of the peace, unless a clear case of irregularity is disclosed. [529]

Qualification.—The only qualification prescribed by statute is that of being a fit person (c).

The offices of clerk of the council and treasurer of the council may not be held by the same person, or by persons who stand in relation to one another as partners or as employer and employee (d). By sect. 122 of the L.G.A., 1933, a person, so long as he is a member of an U.D.C., and for twelve months after he ceases to be a member, is disqualified for being appointed by that council to a paid office.

The conclusions arrived at by the Departmental Committee on the qualification, etc., of Local Government Officers, in their Report of January 10, 1934 (e), as to the necessity of the possession by the clerk of a legal qualification are set out in the title CLERK OF THE RURAL DISTRICT COUNCIL, at p. 222, *ante*. [530]

Appointment.—The committee already mentioned, on pp. 20, 21, of their Report, recommend that every senior vacancy, to which it is not intended to promote an existing officer, should be advertised in the appropriate press, and that all councils should provide by standing

(a) 13 Statutes 707.

(b) [1929] 1 K. B. 737; Digest (Supp.).

(c) L.G.A., 1933, s. 107 (1); 26 Statutes 362.

(d) *Ibid.*, s. 107 (4).

(e) No. 32—306.

order that canvassing for any appointment will disqualify the candidate and should see that this standing order is observed.

The advertisement usually requires that a candidate should not have passed a certain age, and that the selected candidate should undergo a medical examination to make sure that he is unlikely to break down in health and become a burden on the superannuation fund.

Although under sect. 107 (2) of the L.G.A., 1933, any person appointed as the clerk will hold office during the pleasure of the council, sect. 121 (1) of the Act allows the council to agree with an officer that the appointment shall not be terminated by either party without giving to the other party such reasonable notice as may be agreed, and if the council propose to act on this provision it would be advisable to say so in the advertisement of the vacancy, because candidates would no doubt prefer that so many months' notice should be given before the appointment is brought to an end.

In the first instance, the selection of three candidates to be submitted to the council is made by a committee of the council, and if the council have appointed an establishment committee by that committee. The most promising candidates are asked to attend the committee for an interview, and the names of the three candidates selected are then submitted to the council, who usually invite the candidates to attend the meeting at which the appointment is to be made. As to the method of voting at the meeting, see the title **APPOINTMENT AND DISMISSAL OF OFFICERS**, Vol. I., pp. 342, 343. [531]

Functions.—In addition to conducting the correspondence of the council and keeping the minutes and other records, the clerk, as the chief administrative officer of the council, is responsible for securing that effect is given to any direction given by the council. It is also the duty of the clerk to prepare the agenda of each committee and of the council, and to see that each member receives a copy.

The minutes of each committee and of the council must be recorded by the clerk or under his direction. The names of the members present must be stated. The minutes must be signed by the person who presided either at the same meeting or (the usual practice) at the next ensuing meeting. Then they become evidence without further proof (L.G.A., 1933, Sched. III., Part V., para. 3). It must be observed that if the signing of minutes should be delayed until after the next meeting of the committee or the council, they may have to be proved like ordinary documents, for instance, by evidence given by some person who was present. [532]

One of the most important and responsible duties of the clerk is that of representing the council at public inquiries by inspectors of the M. of H. and other Government departments. As these inquiries usually involve the presentation of figures, it is essential that they should be carefully tabulated beforehand. The best course is for the clerk to prepare a full statement of the council's case in duplicate, and provide the inspector with a copy immediately after the preliminaries of the inquiry are opened. As the inquiry is public, the clerk must proceed to read his statement, but the inspector will be saved the trouble of taking notes, and it will be certain that no points fail to reach his notice. Any evidence of a technical nature should be presented in similar form. Copies should be available to be handed to those representing any objector, and to the press to secure an accurate report of the proceedings. [533]

One of the duties of the clerk is to keep his council advised as to their powers, and especially to bring to their notice any new legislation. The powers of an U.D.C. depend upon a series of statutes commencing with the P.H.A., 1875, which was a consolidation of many Acts passed during the previous thirty years. It extends to 343 sections and several schedules, but it has been amended by a number of later Acts, which deal with many new conditions. Other legislation has been passed from time to time, especially on housing and town and country planning, so that the statutes relative to the work of sanitary authorities have grown to an enormous bulk. Large as this is, it is swollen by Orders and Regulations issued by the Minister of Health under the special powers vested in him by Parliament, and it is impossible for the ordinary councillor to read up, much less to digest, this vast body of law. An efficient clerk must not only know it, but must cultivate the ability to explain it to the council. [534]

He should also be prepared to advise his council as to the desirability of adopting or applying for the application to the district of any of the provisions of the P.H. Acts which are not of general application.

The clerk, unless he is for any reason unable or unwilling to act, is the Returning Officer at any election of the U.D.C. (*ee*).

He is the registrar of local land charges in respect of the urban district, an important duty in respect of which he may become personally liable to penalties. See title LOCAL LAND CHARGES.

The clerk is responsible for several important duties relating to the financial position of the council. He must make a return whenever required by the Minister of Health, showing the provision made by the council for the repayment of all loans—by sinking fund or otherwise. If he fails to do so, he is liable to a fine of £20, in addition to legal proceedings by *mandamus* (L.G.A., 1933, sect. 199). He must keep a register of all the council's mortgages, enter every mortgage within fourteen days of its date, enter up all transfers or transmissions, changes of address of mortgagee and other details. If he refuses or wilfully neglects to make any such entry, he is liable to a fine of £20. If he refuses inspection of this register he is liable to a fine of £5 (L.G.A., 1933, sect. 207).

In order to reveal the financial position of the council every year, an annual financial statement must be prepared for certification by the district auditor at the audit and transmission to the M. of H. by the auditor. If this is not done, the clerk is liable to a fine of £20 in addition to proceedings by *mandamus* (L.G.A., 1933, sect. 222). [535]

Only if the council by a resolution under sect. 277 of the L.G.A., 1933, have authorised the clerk generally or specially to institute or defend on their behalf proceedings before the justices in petty sessions, or to appear on behalf of the council before the justices in any proceedings instituted by the council or on their behalf or against them, can he institute proceedings, but he may then conduct the case although he is not a solicitor holding a practising certificate. The section allows any member or officer of the council to be so authorised by them, either generally or in respect of any particular matter. Sect. 259 of the P.H.A., 1875 (*f*), which is repealed, allowed the clerk to appear on behalf of the council before any court, or in any legal proceedings,

(*ee*) Art. 1; U.D. Councillors Election Rules, 1934, S.R. & O., 1934, No. 545.

(*f*) 13 Statutes 734.

and to institute and carry on proceedings, without any special authorisation by a resolution of the council, and it should be noted that an authorisation will in future be necessary, and that any general authorisation will extend only to proceedings before the justices, a special direction of the council being required as respects proceedings in other courts. [586]

Interest in Contracts.—Sect. 193 of the P.H.A., 1875 (*g*), which forbids an officer of a local authority to be concerned in any bargain or contract made with such authority for any of the purposes of the Act, or to exact or accept any fee or reward other than his proper salary, wages and allowances, is also repealed by the L.G.A., 1933, and replaced by sect. 123 of that Act. Sub-sect. (1) of the section requires an officer, if it comes to his knowledge that a contract in which he has any direct or indirect pecuniary interest, has been or is proposed to be entered into by his council, or any committee of the council, to give to the council written notice, as soon as practicable, of the fact that he is so interested. Notice is not, however, necessary, if the officer is himself a party to the contract.

In deciding whether an indirect pecuniary interest exists, the subsection applies sect. 76 (2) and (3) of the Act, which relate to the interest in contracts of members of councils.

Sub-sect. (2) of sect. 123 of the Act of 1933 re-enacts the provision in sect. 193 of the P.H.A., 1875, forbidding an officer, under colour of his office or employment, to exact or accept any fee or reward (*h*) whatsoever other than his proper remuneration.

The penalty for a failure to give notice under sub-sect. (1) of sect. 123, or for a contravention of sub-sect. (2) is a fine not exceeding £50, recoverable before a court of summary jurisdiction. The fine under sect. 193 of the P.H.A., 1875, was of the same amount, but the consent of the Attorney-General was required to a prosecution under that section by the P.H. (Officers) Act, 1884 (*i*). This Act is repealed by the L.G.A., 1933, and is not repeated in the new Act. Another provision which disappears is the portion of sect. 193 of the P.H.A., 1875, which disqualifies an officer who contravenes that section from holding or continuing in any office or employment under that Act. It will be seen that the new provisions are less severe than the earlier law. Obviously if any doubt is felt by an officer as to whether he is or is not interested in a contract which has been made or is being considered by his council, or any of their committees, it will be wise to give the notice required by the section. [537]

Deputy Clerks.—The L.G.A., 1933, authorises the appointment of a deputy clerk who may be either a standing deputy clerk (sect. 115) or a temporary deputy clerk (sect. 116).

A standing deputy clerk may be appointed by the council to act whenever the office of clerk is vacant or the clerk is unable to act.

If there is no deputy clerk, and the office of clerk is vacant or the clerk is unable to act, the council may appoint a person to act temporarily as clerk.

(*g*) 13 Statutes 709.

(*h*) As to the meaning of these words, see *Edwards v. Salmon* (1889), 23 Q. B. D. 531; 33 Digest 17, 61.

(*i*) 13 Statutes 802.

Unless the appointment otherwise provides, the standing or temporary deputy clerk is responsible for carrying out all the duties normally carried out by the clerk. He holds office at the pleasure of the council, unless a special agreement for notice being given before the appointment is terminated is made under sect. 121 of the Act. A reasonable remuneration may be paid by the council to either kind of officer (sects. 115 (2), 116 (2)). [538]

CLERKS TO GUARDIANS COMMITTEES

See GUARDIANS COMMITTEES.

CLERKS TO JUSTICES

See JUSTICES' CLERK.

CLINICS

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BACTERIOLOGICAL LABORATORIES ;
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MATERNITY AND CHILD WELFARE ;
 MENTAL DISORDER AND MENTAL DEFICIENCY ;
 PUBLIC ASSISTANCE AUTHORITIES ;
 TUBERCULOSIS ;
 TUBERCULOSIS OFFICER ;
 VENEREAL DISEASES.

Preliminary Observations.—The word "Clinic" is one which is variously used. It does not appear in any statute and has not been

legally defined. It was originally used to describe an institution, class or lecture for instruction of students in the examination and treatment of patients. It has come, however, to mean a centre to which patients come for advice and/or treatment, without necessarily any association with teaching. The term may be limited either to a centre to which patients are admitted for residential treatment, or to one where the patients merely visit for advice and treatment. It is usual to describe the former as an in-patient clinic, the latter as an out-patient clinic. The term "out-patient clinic" may be used exactly in the same sense as the word "dispensary." Because, however, of the use to which centres have been put by local authorities under the title of out-patient clinics during the last twenty-five years, it is becoming usual to regard their main functions as advisory in relation not only to strictly medical matters, but also to such social circumstances as may affect, or arise from, the state of health of the individual, his family and others with whom he may come into contact; whereas dispensaries still tend to be looked upon as centres which serve the more limited purpose of giving medical advice and treatment, and supplying medicines to out-patients without special concern as to the alleviation of adverse social circumstances. This distinction, however, cannot be strictly adhered to in relation to local government law and administration, since medical treatment and advice constitute the main part of the functions of some types of clinic (e.g. venereal diseases clinics) established by local authorities, while social work is an essential feature of tuberculosis dispensaries, specifically referred to by that name in a statute, viz. the Public Health (Tuberculosis) Act, 1921 (*a*).

An out-patient clinic may be attached to a hospital, or have no connection, direct or remote, with such an institution. An in-patient clinic is usually a ward or wards of a hospital ear-marked for patients suffering from certain types of disease or for special forms of treatment, but it may be a minor part of a centre, the functions of which are mainly the care of out-patients.

Local government law and administration are concerned with clinics which may be provided either for in-patients, or for out-patients, or for both purposes. [539]

General Outline.—Clinics provided by local authorities, other than education authorities, are principally established under maternity and child welfare schemes, tuberculosis schemes and venereal diseases schemes, but they may also be provided for advice and the treatment of mental disease, or as part of the medical provision for the relief of the poor, or, indeed, for any pathological purpose within the powers of local authorities. For all or any of these purposes, the local authorities responsible for the administration of the appropriate services may build and maintain clinics or make arrangements with other bodies for the use of clinics provided by the latter. Under such arrangements the law permits of a great deal of freedom as to how the authorities will defray the cost of the clinics so provided. [540]

General Power to Provide Clinics.—The provision of clinics in general is allowed by the P.H.A., 1875, sect. 131 (*b*), which enables the council of a borough or district to provide for the use of the inhabitants of their area hospitals or temporary places for the reception of the sick, either by building such places themselves or utilising by contract or agreement

(a) 13 Statutes 971.

(b) *Ibid.*, 678.

such places not in their ownership. The P.H.A., 1925, sect. 64 (c), as amended by the L.G.A., 1929, sect. 75 (d), permits these councils to contribute to the cost of services given by a voluntary hospital or institution by means of a reasonable subscription or donation (not to exceed the product of a penny and one-third in the pound of rateable value in any one year) instead of by way of contract. It appears to be accepted that a clinic, even if its services are available only for out-patients, is a place for the reception of the sick.

By sect. 14 (1) of the L.G.A., 1929 (e), these powers were extended to county councils following the transfer to them of the administration of the poor laws.

Further, sects. 130 and 134 of the P.H.A., 1875 (f), empower the Minister of Health, by order, to make regulations for the prevention and treatment of epidemic, endemic or infectious disease, and to declare by what authority they shall be executed. Most of the clinics hitherto provided have been established under special powers relating to particular diseases or groups of diseases or to certain sections of the population. [541]

Maternity and Child Welfare. Power to Provide Clinics.—The power to establish and maintain clinics for mothers and children is contained in the Notification of Births (Extension) Act, 1915 (g), and in the Maternity and Child Welfare Act, 1918 (h). The former Act (sect. 2 (1)) enables a local authority as defined by the Notification of Births Act, 1907 (i) (see title MATERNITY AND CHILD WELFARE), to exercise any of the powers of a sanitary authority afforded by the P.H. Acts, 1875—1907, for the purpose of the care of expectant mothers, nursing mothers and young children. The Maternity and Child Welfare Act, 1918 (k), enables a local authority, similarly defined, to make such arrangements as may be sanctioned by the Minister of Health for attending to the health of expectant and nursing mothers, and of children under five years of age who are not being educated in schools recognised by the Board of Education. It should be noted that welfare clinics or centres for mothers and children, including ante-natal clinics, may be provided under either Act. If the power given by the Notification of Births (Extension) Act is used, the local authority do not require the sanction of the Minister unless it is proposed to raise a loan (see title BORROWING); on the other hand, any similar provision made in terms of the Maternity and Child Welfare Act requires such sanction, but the Minister has given local authorities, by circular dated February 12, 1930 (Circular 1072), a general sanction to extend services, which they have already provided, including, it would seem, the extension of clinics (kk). [542]

Out-patient Clinics.—Maternity and child welfare schemes may, and usually do, include clinics, or centres, at which mothers and children attend for advice, medical supervision and, if necessary, medical treatment. In a circular issued on August 9, 1918, by the President of the Local Government Board (M. and C.W. 4) it was pointed out that such centres should provide medical treatment of a minor character only, more serious cases being referred to a doctor or a hospital. Subject to the safeguard that an authority has no power to establish a general

(c) 13 Statutes 1143.

(e) *Ibid.*, 891.

(g) 15 Statutes 767.

(i) 15 Statutes 765.

(kk) See Circular 1433 of the M. of H., October 10, 1934, as to the desirability of developing maternity services.

(d) 10 Statutes 932.

(f) 13 Statutes 678, 680.

(h) 11 Statutes 742 *et seq.*

(k) 11 Statutes 742 *et seq.*

domiciliary service by medical practitioners under the Maternity and Child Welfare Act, 1918 (*l*), there is no restriction in law upon the extent of the medical provision which may be made at a clinic. The service has, however, usually been limited to the following clinics for infants and young children, viz. advisory clinics for children who are not suffering from any ailment, nutrition clinics, minor ailment clinics, clinics for diseases of the ear, nose and throat, ophthalmic clinics, orthopædic clinics for crippled or deformed children, light-treatment clinics, X-ray clinics and dental clinics; and for mothers, ante-natal clinics, post-natal clinics, light-treatment clinics and dental clinics. It should be noted that post-natal clinics can be provided under the Notification of Births or Maternity and Child Welfare Acts only for women who are nursing mothers, but the general power to establish clinics contained in the P.H.A., 1875, as extended by the L.G.A., 1929 (see *ante*, p. 231), enables a sanitary authority or a county council to provide treatment at clinics for women not falling into this category, and it is convenient to hold sessions for post-natal cases in the clinics which are utilised, staffed and equipped for ante-natal purposes.

Ante-natal and post-natal clinics may be, and commonly are, conducted in premises used also for child welfare consultations. In any case, a definite part of the work of the latter is concerned with the fitness of the mother for the nurture of her child, with special reference to breast-feeding, a post-natal problem. Any or all of these clinics may be attached to a hospital, but as it is convenient that a child welfare clinic should be near the homes of the young children to be served by the clinic, premises are usually acquired by purchase or rental, specifically for clinic purposes, in several parts of the area of the council. On the other hand, ante-natal and post-natal clinics may be established in close association with a maternity hospital or home, or the maternity wards of a general hospital, in order to take advantage of the more specialised medical skill and more elaborate equipment which a hospital affords. Subsidiary ante-natal and post-natal clinics may then be provided in common with the child welfare clinics, at which the less serious ailments of pregnant women, or women recently confined, may receive attention. If this practice is followed, the local authority may provide also at the hospital a child welfare clinic, either for the general supervision of the infants born in the hospital, or to serve the purpose of a consultation centre for children who would normally attend at a district clinic, but require special supervision for some disease or defect. [543]

In-patient Clinics.—The in-patient treatment of patients falling within the province of maternity and child welfare may be carried out at special hospitals or homes for midwifery or diseases of women or diseases of children provided under the P.H.A., 1875, as amended and extended by the Notification of Births Acts and the L.G.A., 1929, s. 14 (1), (2), or under the Maternity and Child Welfare Act, 1918 (see *ante*, p. 232, and titles HOSPITALS and MATERNITY AND CHILD WELFARE). For this purpose, however, a special ward or group of wards in a general hospital may be utilised, which may properly be described as an in-patient clinic. Such a clinic may be provided in a hospital established by the local authority under its general powers or in an institution not belonging to the authority (see *post*, p. 235). An in-patient clinic may, however, be an annexe to premises primarily acquired for the purpose of an out-patient clinic, an arrangement which has been adopted

(1) See proviso to s. 1; 11 Statutes 742.

especially in relation to children requiring observation and special dietetic care in the early months of life, and mothers who require special supervision to maintain or restore breast-feeding, such patients not suffering from serious illnesses which involve prolonged periods of residence.

An in-patient clinic for the treatment of puerperal fever and puerperal pyrexia, the former being notifiable under the Infectious Disease (Notification) Acts, 1889 (*m*) and 1899 (*n*), and the latter under the Public Health (Notification of Puerperal Fever and Puerperal Pyrexia) Regulations, 1926 (*o*), may be a part either of an isolation hospital or of a maternity hospital or home, or any other accommodation which the authority may set apart for the purpose under its general power to make hospital provision. [544]

Clinics in Poor Law Institutions.—Where a local authority have not made a declaration in terms of the L.G.A., 1929, sect. 5 (*p*), that all assistance relating to maternity and child welfare will be provided exclusively by virtue of the P.H.A., 1875, as amended by the Notification of Births (Extension) Act, 1915, or of the Maternity and Child Welfare Act, 1918, it may be convenient to conduct a clinic for the purpose of maternity and child welfare in an institution transferred from the abolished board of guardians. The persons attending, or received into, such a clinic must belong to the class entitled to medical relief under the poor law (see title POOR RELIEF). In this connection it is important to note that the accepted definition of destitution in relation to medical needs is a wide one, as expressed, before the Royal Commission on the Poor Laws, 1905 to 1909, by Mr. Adrian, the legal adviser of the Local Government Board as follows: "Destitution, when used to describe the condition of a person as a subject for relief, implies that he is, for the time being, without material resources (1) directly available, and (2) appropriate for satisfying his physical needs (a) whether actually existing, or (b) likely to arise immediately. By physical needs in this definition are meant such needs as must be satisfied (1) in order to maintain life, or (2) in order to obviate, mitigate or remove causes endangering life or likely to endanger life or impair health or bodily fitness for self-support" (*q*). This definition is applicable generally to the state of need of the population ordinarily dealt with under maternity and child welfare schemes, especially in relation to in-patient clinic treatment, so that very little difficulty need arise with regard to persons dealt with at clinics attached to poor law institutions. The procedure associated with poor law administration for admission to such clinics may be obviated by an assignment, as part of an approved scheme, of their management, or of such functions as the control and appointment of staff and the admission of patients, to the Maternity and Child Welfare Committee (see title MATERNITY AND CHILD WELFARE), to be discharged by them under the general direction and control of the Public Assistance Committee as authorised by the Poor Law Act, 1930, sect. 4 (4) (*r*) (see also title PUBLIC ASSISTANCE AUTHORITIES). Further, the council may apply to the Minister for an order varying the general regulations in force, so as to add the M.O.H., or some other designated medical officer, to those already authorised by Art. 25 of the Public Assistance Order, 1930 (*s*), to admit persons to a

(*m*) 18 Statutes 811 *et seq.*

(*o*) S.R. & O., 1926, No. 972.

(*q*) See Part IX., p. 597, para. (4) of the Report.

(*s*) S.R. & O., 1930, No. 185; 12 Statutes 1057.

(*n*) *Ibid.*, 879.

(*p*) 10 Statutes 885.

(*r*) 12 Statutes 971.

poor law institution. By these means it is possible to make a clinic at a poor law institution, whether in-patient or out-patient, an integral part of a maternity and child welfare scheme. [545]

Clinics under Voluntary Management.—A local authority are empowered by the P.H. Acts, the Notification of Births (Extension) Act, 1915 (a), and the Maternity and Child Welfare Act, 1918 (b), to enter into an arrangement with a voluntary body whereby a maternity and/or child welfare clinic may be provided and maintained by such a body at the cost of the authority (see *ante*, p. 233). For this purpose they may defray the cost by an annual contribution, or by a payment for each patient treated, or by a payment for each attendance of an out-patient, or for each day of in-patient residence, or by refunding the whole or part of the actual cost of the clinic. Apart from any such local arrangement, the local authority are required by the L.G.A., 1929, sect. 101 (c), to submit a scheme for the payment, during each of the fixed grant periods provided for in the Act, of contributions to certain voluntary associations which may, among other things, manage clinics for the benefit of the county, borough, or district. Such grants are usually in replacement of exchequer grants administered by the M. of H. prior to April 1, 1930 (see title GRANTS). [546]

Qualifications of Officers.—Apart from the general requirements for senior maternity and child welfare officers and health visitors, which must be observed in so far as such officers are employed at clinics (see title MATERNITY AND CHILD WELFARE), qualifications are prescribed for a medical officer of an ante-natal clinic by the Local Government (Qualifications of Medical Officers and Health Visitors) Regulations, 1930 (d). Such an officer must be a registered medical practitioner and, if he has not held the appointment of medical officer of an ante-natal clinic prior to April 1, 1930, with the Minister's approval, he must have had at least three years' experience in the practice of his profession and special experience of practical midwifery and ante-natal work, before appointment to this position. The Minister, however, may dispense with this requirement if it appears desirable to do so, and if it can be done without prejudice to the interests of any person. [547]

Association with School Clinics.—Clinics established for the purposes of maternity and child welfare afford advice and treatment of the same kind as that which may be provided under the Education Acts for children of school age (see title EDUCATION: SPECIAL SERVICES). Their staffing and equipment are similar. It is, therefore, convenient and usual for a local authority which is an authority both under the Maternity and Child Welfare Act, 1918 (e), and the Education Act, 1921 (f), to utilise for both purposes the same staff and premises. The cost must then be equitably apportioned between the two services and charged to the appropriate account. [548]

Birth Control Clinics.—Apparently because clinics for giving advice to women on contraceptive methods are not regarded as hospitals or places for the reception of the sick (see *ante*, p. 231), "the Government are advised that local authorities have no general power to establish birth control clinics as such" (Memorandum 153/M.C.W., issued by the M. of H. in March 1931). If, therefore, it is decided to provide, or

(a) 15 Statutes 767.

(c) 10 Statutes 946.

(e) 11 Statutes 742 *et seq.*

(b) 11 Statutes 742 *et seq.*

(d) S.R. & O., 1930, No. 69.

(f) 7 Statutes 180 *et seq.*

contract for the use of, such a clinic, the local authority's responsibility must be limited to women who are in attendance as expectant or nursing mothers, and in whose case further pregnancy would be detrimental to health; or who, although not expectant or nursing, are in attendance at a post-natal or gynaecological clinic for the treatment of some gynaecological disease or abnormality, and in whose case pregnancy, or further pregnancy, would be detrimental to health; or to married women who are suffering from non-gynaecological diseases, mental or physical, which would be detrimental to them as mothers (*g*). Other points dealt with in this memorandum are mentioned in the title BIRTH CONTROL, Vol. II., pp. 92, 93. [549]

Tuberculosis Clinics.—The general power of a sanitary authority to establish clinics for the treatment of tuberculosis is contained in the P.H.A., 1875, sect. 131 (*h*) (see *ante*, p. 231). This power is extended by the Public Health (Prevention and Treatment of Disease) Act, 1913 (*i*), sects. 2 and 3, whereby the Minister of Health may declare that one of the authorities to execute regulations made by him under the P.H.A., 1875, sect. 130 (*k*), may be a county council; and either a county council or a sanitary authority may make any such arrangements for the treatment of tuberculosis as may be sanctioned by the Minister (see also title TUBERCULOSIS). The Minister may, in default of the council of a county or county borough, make adequate arrangements for the treatment of tuberculosis and recover the cost from them by the power conferred on him by the Public Health (Tuberculosis) Act, 1921 (*l*). Such arrangements may include, among other things, the provision of clinics. Any modification of the arrangements requires the sanction of the Minister, but in Circular 1072 (see *ante*, p. 232) he has sanctioned the extension of any scheme without reference to him unless it is necessary to borrow money for the purpose.

The word clinic is not generally used in relation to tuberculosis; out-patient clinics for this purpose usually being described as dispensaries. Their general object and administration, however, is in no respect different from those of other clinics provided by local authorities (see *ante*, p. 231). In-patient clinics for observation of cases of doubtful diagnosis may be provided in association with out-patient dispensaries, but they are usually part of a hospital or sanatorium (see title TUBERCULOSIS). If accommodation in a poor law institution is utilised for the purpose of a tuberculosis clinic, the conditions and limitations mentioned above (*ante*, p. 234) in relation to maternity and child welfare clinics apply. Special qualifications are required for the officers associated with such clinics (see titles TUBERCULOSIS and TUBERCULOSIS OFFICER). The records of the work of a tuberculosis clinic must be kept in a manner which will enable the tuberculosis officer to make an annual return to the Minister in a form prescribed (Memorandum of the M. of H., 37/T, revised, October, 1930). [550]

Venereal Disease Clinics.—The provision of such clinics is governed by the Public Health (Venereal Diseases) Regulations, 1916 (*m*), made under the P.H.A., 1875, sect. 130 (*n*), as extended by the P.H. (Prevention and Treatment of Disease) Act, 1913, sect. 2 (*o*). Art. II.

(*g*) M. of H. Circular 1408, May 31, 1934.

(*i*) *Ibid.*, 953.

(*l*) S. 1 (2); *ibid.*, 971 *et seq.*

(*n*) 13 Statutes 678.

(*h*) 13 Statutes 678.

(*k*) *Ibid.*, 678.

(*m*) S.R. & O., 1916, No. 467.

(*o*) *Ibid.*, 953.

of the Regulations imposes the duty upon county and county borough councils of submitting schemes for the treatment at hospitals or other institutions of persons suffering from venereal diseases, and of ensuring that such treatment shall be given under confidential conditions (see title VENEREAL DISEASES). The diseases to which the Regulations apply are defined in Art. V. as syphilis, gonorrhoea and soft chancre.

The arrangements which meet with the approval of the Minister are described in a circular to county and county borough councils, issued by the Local Government Board on July 13, 1916. Clinics may be provided directly by the council, either in connection with hospitals primarily established for some other purpose or in premises acquired *ad hoc*. More usually, however, where a voluntary hospital, with a suitable out-patient department, exists in the area, arrangements have been made for a clinic to be conducted there at the cost of the council. Venereal disease clinics are mainly for the treatment of out-patients, but the Minister requires that a small number of beds for the in-patient treatment of both sexes should be available. There should be as little differentiation as possible between the premises used as a clinic and the rest of the institution, in order to avoid any stigma upon the patients whom it serves. The records to be kept are prescribed in a Memorandum of the Local Government Board, dated December, 1916, and it is essential that these should not be open to inspection by any person other than the medical officer of the clinic.

Special clinics for venereal diseases affecting married mothers and children under five years of age may be established in association with child welfare centres.

Where a voluntary hospital is utilised for the purpose of a clinic, it may serve a wider area than the borough or district in which it is situated, and the committee of the hospital may enter into agreements with more than one council—usually with the county council and one or more county borough councils. The cost may be apportioned between the authorities on the basis of the number of patients from each area, but the names and addresses of patients must not be scrutinised by financial or other officers of the councils for this purpose. In any case, agreements must provide that patients are not debarred from treatment because their homes are outside the areas of the contracting authorities.

The special facilities provided for venereal disease clinics are intended chiefly for the communicable forms of these diseases and not their late and non-communicable stages. To ensure that this and other conditions are observed, agreements should provide for access to the clinics by the M.O.H. and medical inspectors of the Ministry.

A clinic may include an ablution centre, for disinfection, under the supervision of a skilled attendant, of persons exposed to infection but not yet showing symptoms of disease, a provision of which the Minister expressed qualified approval in a circular of May 31, 1921.

It is laid down by the Local Government (Qualifications of Officers and Health Visitors) Regulations, 1930 (*p*) (see *ante*, p. 235), that the medical officer in charge of a treatment centre (designated a "Venereal Diseases Officer") shall be a registered medical practitioner who, unless he has held an appointment as venereal diseases officer with the approval of the Minister prior to April 1, 1930, shall have had at least three years'

experience in the practice of his profession and also hold a certificate, granted by the venereal diseases officer of a clinic dealing with at least five hundred new cases per year, stating that he has received instruction there for at least one hundred and thirty hours during a period of not less than three months.

Any modifications of the arrangements for the treatment of venereal diseases at clinics legally require the sanction of the Minister, but in Circular 1072 (see *ante*, p. 232) a general sanction was given to any extension not involving capital expenditure by way of loan. [551]

Mental (or Psychiatric) Clinics.—These clinics may be established in virtue of the power by the Mental Treatment Act, 1930 (*q*), sect. 6 (3) (*a*), conferred upon local authorities for the execution of the Lunacy Act, 1890 (*r*). Their object is to provide facilities for the examination of incipient cases of mental disease which may not have reached a stage necessitating in-patient treatment and supervision. They may also serve as centres for the examination of former hospital patients who are the subject of the after-care provided for by sect. 6 (3) (*b*) of the Mental Treatment Act, 1930 (*s*). Such a clinic may be established by joint arrangement between two or more authorities under sect. 6 (3) (*e*) of the Act.

Psychiatric clinics are usually associated with a hospital, which may be a mental hospital provided by a local authority. The Board of Control, however, in a memorandum, dated September, 1930, and accompanying Circular No. 745 of that date, have recommended authorities to arrange for their clinic to be organised in association with a general hospital, whether municipal or voluntary, in order to overcome the reluctance of patients to attend mental hospitals. In such a case, it is advised that the medical staff of the mental hospital should be engaged in the work of the clinic (see also title MENTAL DISORDER AND MENTAL DEFICIENCY). [552]

Cancer Clinics.—Such clinics have been established by some local authorities in order to afford facilities for the specialist diagnosis of cancer in its early stages. The power to do so is the general power given by the P.H.A., 1875, sect. 131 (*t*), as amended by the L.G.A., 1929, sect. 14 (1) (*a*) (see *ante*, p. 231). They may be provided at a hospital, municipal or voluntary, or in other premises in the ownership of the local authority, or acquired specifically for the purpose. If a radium treatment centre has been established at a voluntary hospital in the area of the authority, or in its neighbourhood, the clinic may be associated with it, and such a centre may serve for the diagnosis and treatment of patients at the expense of more than one authority. [553]

Clinics under the Poor Law.—The duty imposed by sect. 15 (*b*) of the Poor Law Act, 1930 (*b*), upon county and county borough councils to provide such relief as may be necessary for the lame, impotent, old, blind and such other persons as are poor and not able to work, may be carried out, among other ways, by the setting up of clinics for the treatment of patients, if the Minister approves. Such clinics may provide for

(*q*) 23 Statutes 161.
(*s*) 23 Statutes 162.
(*a*) 10 Statutes 891.

(*r*) See s. 240 ; 11 Statutes 99.
(*t*) 13 Statutes 678.
(*b*) 12 Statutes 978.

in-patient or out-patient treatment of disease, with a definite restriction to persons judged to be necessitous (see *ante*, p. 234). They may be entirely of the nature of out-patient dispensaries, at which one or more district medical officers, appointed under the Public Assistance Order, 1930, Art. 142 (c), attend for the advice and treatment of patients, or they may be attached to a hospital or institution either for a similar purpose, or more especially to facilitate the selection of in-patients for admission, to treat casualties not requiring admission, and to provide supervision and treatment for former in-patients recently discharged.

If appropriate declarations have been made in terms of the L.G.A., 1929, sect. 5 (d) (see *ante*, p. 234) premises established under the Public Health or other Acts mentioned in the section, or appropriated for the purpose of these Acts (see *ante*, p. 233), may be used as clinics at which advice and treatment may be given to poor persons, but a domiciliary medical service for poor persons, if centred upon such clinics, must be provided under the poor law. Administrative difficulties arising may be overcome by the assignment by the council of out-door medical relief to the management of the health or other committee, under the general direction and control of the public assistance committee, as authorised by the Poor Law Act, 1930, sect. 4 (4) (e) (see *ante*, p. 234).

In addition to the general powers afforded by the P.H. Acts, enabling local authorities to contribute to voluntary hospitals or institutions (see *ante*, p. 232), subscriptions rendered specifically in return for services given to the poor may be made by county and county borough councils under the Poor Law Act, 1930, sect. 67 (f). [554]

Recovery of Costs.—In virtue of the power conferred by the P.H.A., 1875, sect. 132 (g), local authorities providing hospitals may recover the cost of *maintenance* of patients (see title HOSPITAL AUTHORITIES). Such recovery has been made a duty, in the case of patients suffering from other than infectious disease, by the L.G.A., 1929, sect. 16 (h). Apparently the term "maintenance" does not include such services as may be given at an out-patient clinic. Further, there is no definition of the term "infectious disease" for the purpose of the section above mentioned, but it does not appear to be limited, as in the P.H. Acts, to those diseases which are notifiable under the Infectious Disease (Notification) Act, 1889 (i).

Where treatment at clinics is provided as part of a scheme sanctioned by the Minister under the Maternity and Child Welfare Act, 1918 (k), or, as regards tuberculosis, under the Public Health (Prevention and Treatment of Disease) Act, 1913 (l), or under any order made by the Minister under the P.H.A., 1875, sects. 130 and 134 (m), the recovery of costs may be sanctioned. It is usual to include arrangements for this purpose in relation to such special services for mothers and children as the treatment of enlarged tonsils and adenoids, the supply of spectacles, dental treatment and orthopædic treatment. It is not the general practice to recover costs for the treatment of tuberculosis or venereal disease, but the Minister, in Circular 1311, dated March 22, 1933, has

(c) S.R. & O., 1930, No. 185 ; 12 Statutes 1075.

(e) 12 Statutes 971.

(g) 13 Statutes, 679.

(i) 13 Statutes 811 *et seq.*

(l) 13 Statutes 953 *et seq.*

(d) 10 Statutes 885.

(f) *Ibid.*, 1001.

(h) 10 Statutes 893.

(k) 11 Statutes 742 *et seq.*

(m) *Ibid.*, 678, 680.

suggested that charges might be made experimentally at certain sessions held at clinics for venereal diseases.

For the power to recover costs under the poor law, including those of clinic treatment, see title **RECOVERY OF POOR RELIEF**. [555]

London.—See title **HOSPITAL SERVICES (LONDON)**. [556]

CLOCKS, PUBLIC

See **PUBLIC CLOCKS**.

CLOSETS, CONVERSION OF

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See also title : **SANITARY CONVENIENCES**.

Provision and Conversion of Closets under Sect. 36 of P.H.A., 1875.—

The chief statutory provisions relating to the power of a local authority to enforce privy accommodation, and the conversion of privies or closets into closets connected with a water-carriage system are contained in sect. 36 of the P.H.A., 1875 (*a*), and sects. 39 to 42 of the P.H.A. Amendment Act, 1907 (*b*).

If a house appears to the local authority—borough council, U.D.C. or R.D.C.—by the report (*c*) of their surveyor or sanitary inspector (*d*), to be without a sufficient water-closet, earth-closet or privy and an ashpit furnished with proper doors and coverings, it is their duty, by written notice (*c*), to require the owner or occupier of the house, within a reasonable time specified in the notice, to provide a sufficient water-closet, earth-closet or privy, and an ashpit furnished with proper doors and coverings (P.H.A., 1875, sect. 36). The expression “privy” here used would include a tub-closet or pail-closet (*e*). If the notice is not complied with, the local authority may do the work and recover

(*a*) 13 Statutes 640.

(*b*) *Ibid.*, 925.

(*c*) For form of report and of notice, see *Ency. Forms*, title “Public Health,” Vol. XII., pp. 309–310.

(*d*) The M.O.H. may exercise the powers of a sanitary inspector; see the L.G.A., 1923, s. 108 (4); 26 Statutes 363.

(*e*) *Burton v. Acton* (1887), 51 J. P. 566; 38 Digest 193, 310.

in a summary manner from the *owner* the expenses incurred, or they may by order declare the expenses to be private improvement expenses (f). Where a water-closet, earth-closet or privy has been and is used in common by the inmates of two or more houses, the local authority may exercise their discretion as to whether a separate closet shall be provided for each house (*ibid.*). [557]

Discretion of Local Authority.—The local authority have power to order what kind of accommodation must be provided. Thus, they may require a water-closet in place of an existing privy (g). But where, for example, they have decided that a privy should be converted into a water-closet, they are not entitled to require the water-closet to be in accordance with a particular specification which does not allow the owner of the house to comply with the notice by providing some other type of "sufficient" water-closet (h). [558]

General Principles Applicable.—The local authority cannot require the conversion of privies, etc., into water-closets under a general scheme of conversion, without reference to the particular circumstances of each case (i).

The general principles applicable to the conversion of closets under sect. 36 of the Act of 1875 were thus explained by Lord STERNDALÉ, M.R., in *Carlton Main Colliery Co. v. Hemsworth R.D.C.* (k): "The local authority must be satisfied that the existing accommodation is insufficient, and also that the circumstances of the particular case require another kind of accommodation, that is to say, that the existing privy could not be put right from a practical and reasonable point of view by amendment, but that the provision of a water-closet was required. They have to be satisfied of that, and I think it is for them in the first instance to consider whether that is the kind of provision that is to be made." The section thus applies where the sanitary convenience has become structurally defective and insanitary to such an extent that it requires some substantial structural work in order to render it fit for use, or where it could not be put right from a practical point of view by the amendment of the existing privy. But the section has no application where the convenience is structurally perfect, and is only unusable owing to some temporary cause, as where there is only some minor mechanical defect, or even a structural defect which could readily be remedied.

It is provided by sect. 42 of the P.H.A., 1925 (l), an adoptive provision, that where it appears to the local authority, on the report of the surveyor or the sanitary inspector, that the soil pipe in connection with a water-closet of a house is not properly ventilated, the water-closet shall not be deemed to be a sufficient water-closet for the purposes of sect. 36 of the Act of 1875. [559]

Provision of Ashpit.—It is possible that the local authority have

(f) As to the methods of recovering private improvement expenses, see ss. 213—215, 257 of the P.H.A., 1875; 13 Statutes 715, 732.

(g) *Nicholl v. Epping U.D.C.*, [1899] 1 Ch. 844; 38 Digest 228, 590.

(h) *Robinson v. Sunderland Corpn.* (1898), 62 J. P. 216; 38 Digest 228, 589.

(i) *Wood v. Widnes Corpn.*, [1898] 1 Q. B. 463; 38 Digest 228, 588; *Agnew v. Manchester Corpn.* (1902), 67 J. P. 174; 38 Digest 228, 592.

(k) [1922] 2 Ch. 609, C. A., at p. 626; 38 Digest 228, 591.

(l) 13 Statutes 1133.

power to deal with an ashpit which is not connected with a privy (*m*). [560]

Jurisdiction of Justices.—Where the work of conversion has been carried out by the local authority in default of the owner or occupier, and summary proceedings are taken to recover the expenses incurred, the justices cannot hear evidence as to the necessity of the work. Their duty is purely ministerial. If the proceedings of the local authority have been regular the justices have no alternative but to order payment of the expenses (*n*). [561]

Appeal to M. of H.—The owner has, however, a right of appeal to the M. of H., under sect. 268 of the Act of 1875 (*o*), on the question whether the existing closet is "sufficient." An appeal does not lie until after the local authority, having done the work, and decided that the expenses shall be recovered in a summary manner, or declared them to be private improvement expenses, demand payment from the owner (*p*). [562]

Recovery of Expenses.—The procedure for the recovery of expenses is by way of complaint for an order, and the Summary Jurisdiction Acts apply (*q*). [563]

Notices.—Notices, orders and other such documents under the Act of 1875, requiring authentication by the local authority, are sufficiently authenticated if signed by the clerk, surveyor or sanitary inspector (sect. 266) (*r*). A notice demanding payment of expenses incurred by the local authority under sect. 36 was held to be sufficiently authenticated by the signature of the rating surveyor, the justices having found that it was part of his duty to prepare, sign and serve all notices demanding payment of money due to the authority, and to collect and receive payment on their behalf (*s*). A notice with the name of the clerk in print, has been held to be a sufficient signature (*t*). [564]

Provision and Conversion of Closets under Sects. 39—42 of P.H.A., 1907.—The powers of local authorities under sect. 36 of the Act of 1875 are extended by sects. 39—42 of the P.H.A. Amendment Act, 1907 (*u*), in boroughs or districts where those sections have been put in force by an order of the M. of H. or the Local Government Board. In connection with any application for these powers, the Ministry require to be assured that the sewerage system and water supply of the area are satisfactory from the point of view of the additional burden likely to be placed on those services by the conversion of closets to the water-carriage system under the provisions referred to.

Where there is a water supply and a sewer, sufficient and reasonably

(*m*) *Carlton Main Colliery Co. v. Hemsworth R.D.C.*, *supra*, per Lord STERNDALÉ, M.R., at p. 627, but see also the doubt expressed by YOUNGER, L.J., on p. 637.

(*n*) *R. v. Sherborne* (1880), *The Times*, March 20; S.C., *sub nom. Bogle v. Sherborne L. B.*, 46 J. P. 875; 38 Digest 228, 595.

(*o*) 13 Statutes 736.

(*p*) *R. v. Local Government Board* (1882), 10 Q. B. D. 309; 16 Digest 375, 2130; *R. v. Local Government Board, Ex parte Thorp* (1914), 84 L. J. (K. B.) 1184; 38 Digest 154, 43.

(*q*) See S. J. Rules, 1915, No. 58.

(*r*) 13 Statutes 735.

(*s*) *Willis v. Rotherham Corpn.* (1911), 105 L. T. 436; 38 Digest 230, 605.

(*t*) *Brydges v. Dix* (1891), 7 T. L. R. 215.

(*u*) 13 Statutes 925—927.

available for use, the local authority may, by written notice to the owner of a building, require any existing closet accommodation—other than a water-closet or slop-closet—provided in connection with the building to be converted into a water-closet or slop-closet. If the owner fails to comply, the local authority, at the expiration of the time specified in the notice, not being less than fourteen days after service, may do the work. Where the work of alteration is done by the local authority in default of the owner in respect of a pail-closet, the expenses are to be borne by them, but where it is done in respect of any closet accommodation other than a pail-closet, one-half only of the expenses are to be borne by the local authority, and the remainder is recoverable summarily from the owner as a civil debt (sect. 39 (4)). Under this provision, by a curious anomaly, the whole of the expenses of conversion fall on the owner if he complies with the local authority's notice and does the work of alteration, or if he acts in anticipation of the receipt of a notice from the local authority. The conversion of water-closets or slop-closets cannot be required under sect. 39 because these may have been installed under a notice previously given by the local authority, and it might be unreasonable to put the owner to the expense of a second conversion. It seems probable that the expense of converting a pail-closet was thrown on the local authority for a similar reason. Every notice in pursuance of the sub-section above summarised must state its effect (*ibid.*). [565]

The expression "water-closet" as used in sect. 39 of the Act of 1907, means a closet comprising provision for flushing the receptacle by a fresh-water supply, and having proper communication with a sewer; and "slop-closet" means a closet comprising provision for flushing the receptacle by slops or waste liquids of the household or rain-water, and having proper communication with a sewer (sect. 39 (1)). The local authority may not require the conversion of any existing closet accommodation into a slop-closet unless the M. of H., by a further order, has declared that the circumstances of the area of the local authority are such as to render it necessary or expedient that sect. 39 shall have effect with respect to slop-closets (sect. 39 (5)). The slop-closet system has proved unsatisfactory, and the M. of H. has of recent years ceased to make such orders as those contemplated by the above enactment.

Where the local authority, on the report of the M.O.H., surveyor or sanitary inspector, are satisfied that sufficient closet accommodation has not been provided in connection with a building, and the case is not one in which sufficient accommodation can be provided by the alteration of any existing accommodation in pursuance of sect. 39 (4) (as to which see *supra*), the local authority, where there are a sufficient water supply and sewer, may, by written notice to the owner of the building, require the building to be provided with such number of proper and sufficient water-closets as the circumstances of the case may render necessary (sect. 39 (3)). If the owner fails to comply, within a period of not less than fourteen days specified in the notice, the local authority may do the work required by the notice, and recover summarily from the owner the expenses thereby incurred (*ibid.*).

Where the local authority do any work under sect. 39 of the Act of 1907 for the common benefit of two or more buildings belonging to different owners, the expenses recoverable from owners under the section are to be paid by the owners of those buildings in such proportions as shall be determined by the surveyor, or, in case of dispute, by a petty sessional court (sect. 40). The local authority may by

order declare any expenses incurred under the section which are recoverable summarily from the owners to be expenses to which sect. 257 of the P.H.A., 1875 (a), applies, relating to the recovery of expenses by local authorities from owners, and thereupon that section, with the necessary modifications, applies (*ibid.*). [566]

Admission to Premises for Inspection.—Any person duly authorised in writing by the local authority must be admitted, on production of his authorisation, into any premises for the purposes of sect. 39 of the Act of 1907; and the provisions of sects. 102 and 103 of the P.H.A., 1875 (b), relating to entry into premises in connection with nuisances, and the penalty for refusal to obey an order of a justice for admission, will apply, with the necessary modifications, to the admission of any such person (sect. 41). [567]

Appeal to Justices by Aggrieved Persons.—Any person who deems himself aggrieved by any requirement of the local authority under sect. 39 of the Act of 1907, or who objects to the reasonableness of any expenses recoverable from him under the section, may appeal to a court of summary jurisdiction within fourteen days after service of the notice of the requirement, or of a demand for payment of the expenses; and the court may make such order in the matter as to them may seem equitable. The order so made is binding and conclusive on all parties (sect. 42). Any appeal subsequent to the service of a demand for payment must be restricted to the ground of the reasonableness of the amount of the expenses, and the appellant is precluded from raising at that stage any other question (*ibid.*).

In view of the provision for appeal to a court of summary jurisdiction, no appeal lies to the M. of H. (see P.H.A. Amendment Act, 1907, sect. 7 (2) (c)); and it would seem from the terms of sect. 42, which make the decision of a court of summary jurisdiction "final and conclusive on all parties," that an appeal from the decision of the justices will not lie to quarter sessions. [568]

London.—The provisions of the P.H.A., 1875, and the P.H.A. Amendment Act, 1907, with respect to the conversion of closets do not apply to London.

Under the P.H. (London) Act, 1891, sect. 16 (2) (b) (d), however, the L.C.C. must make bye-laws as to the closing and filling up of cess-pools and privies, and under sect. 39 (1), must make bye-laws with respect to water-closets, earth-closets, privies and ashpits, and the proper accessories thereof, in connection with buildings, whether constructed before or after the passing of the Act.

Sect. 40 enables the sanitary authority to examine any water-closet, earth-closet or privy, and any water supply, pipe or other works or apparatus connected therewith, and to enter upon premises after due notice for such purpose, and to recover the reasonable expenses of such examination if any such work is found not to be in proper order or condition.

Sect. 41 (1) imposes a penalty on any person executing work not in accordance with the bye-laws, or who without the consent of the sanitary authority constructs or rebuilds any water-closet, earth-closet or privy which has been ordered not to be made or demolished.

(a) 13 Statutes 732.
(c) *Ibid.*, 918.

(b) *Ibid.*, 665.
(d) 11 Statutes 1035.

By sect. 37 it is unlawful newly to erect any house, or to rebuild any house pulled down to or below the ground floor, without one or more proper and sufficient water-closets, according as circumstances may require, furnished with a suitable water supply and apparatus, except where the sewerage or water supply sufficient for a water-closet is not reasonably available, when the section is complied with by the provision of a privy or earth-closet. If any house is without a proper and sufficient water-closet, notice must be served by the sanitary authority under sect. 37 (3), on the owner or occupier to provide the same, and on his default the authority may execute the work and recover the cost from the owner.

Any person aggrieved by a notice or act under sect. 37 of a sanitary authority, may appeal to the L.C.C. (sub-sect. (5)). **[569]**

CLOSING HOURS

See INTOXICATING LIQUORS ; SHOPS.

CLOSING OF SCHOOLS

See PREVENTION OF DISEASE.

CLOSING ORDER

See INSANITARY HOUSES ; SLUM CLEARANCE.

CLUBS

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See also title : INTOXICATING LIQUORS.

Definition.—A club may be defined as “a society of persons associated together for social intercourse, for the promotion of politics, sport, art, science or literature, or for any purpose except the acquisition of gain” (a). [570]

Members' Clubs.—An unincorporated members' club is a society of persons each of whom contributes to the funds out of which the expenses of conducting the club are paid. It is not a legal entity apart from the members constituting the club. The property and funds are usually vested in trustees who hold on behalf of the members jointly for the time being. The interest of members in the property can only be realised on a dissolution. If provisions or other goods are supplied to a member at a given price, this is not a sale. It is in effect a release by the other members of the club of their interest in the goods supplied (b). The management of the club and its property is in the hands of the members, though the business of the club will ordinarily be delegated to, and carried on by, a committee. If a member steals or embezzles any property of the club, he may be convicted of larceny or embezzlement (c). [571]

Proprietary Clubs.—The property and funds of such clubs belong to the proprietor. They are usually conducted with a view to profit. Members may be sued for food consumed (d). [572]

Incorporated Clubs.—A club may be incorporated under the Companies Act, 1929 (e), whether a members' club or a proprietary club. The company may be limited by shares or guarantee. Where a members' club is incorporated the most convenient method is to register it as a company limited by guarantee, and include all the members of the club in the company. In the case of an incorporated

(a) 4 Halsbury (Hailsham ed.), title “Clubs.”

(b) *Graff v. Evans* (1882), 8 Q. B. D. 373, 378, 379; 8 Digest 522, 109.

(c) Larceny Act, 1916, s. 40 (4); 4 Statutes 835.

(d) *National Sporting Club, Ltd. v. Cope* (1900), 82 L. T. 352; 8 Digest 523, 118; *Bowyer v. Percy Supper Club, Ltd.*, [1893] 2 Q. B. 154; 8 Digest 523, 117.

(e) 2 Statutes 775 *et seq.*

proprietary club the company is distinct from the club. The company are the proprietors, and the rights and liabilities of the shareholders depend upon the memorandum and articles of association. [573]

Working Men's Clubs.—These are “societies for purposes of social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation.” (f) They may be registered without payment of any fee (g). They then become subject generally to the statutory provisions relating to friendly societies. [574]

Shop Clubs.—A shop club is defined by sect. 7 of the Shop Clubs Act, 1902 (h), as any “club or society for providing benefits to workmen in connection with a workshop, factory, dock, shop or warehouse.” It is an offence under sect. 2 for an employer to make it a condition of employment that any workman shall join a shop club, but not if the club is registered and certified by the Registrar of Friendly Societies. Before certifying a shop club, the Registrar must be satisfied that it is one that affords to the workman benefits of a substantial kind, in the form of contributions or benefits at the cost of the employer, in addition to those provided by the contributions of the workman; that it is of a permanent character, and is not a society that periodically divides its funds; and that at least 75 per cent. of the workmen desire the establishment of the shop club (*ibid.*, sect. 2). The regulations set out in the schedule to the Shop Clubs Act apply to any shop club certified under the Act (*ibid.*, sect. 3). [575]

Registration of Clubs.—The secretary of every club which occupies premises habitually used for the purposes of a club in which intoxicating liquor is supplied to members or their guests must cause the club to be registered (i). The clerk to the justices of every petty sessional division is required to keep a register of all clubs within the division, containing the name and objects of the club, its address, the name of the secretary, the number of members, the rules relating to the election of members, and the admission of temporary and honorary members and of guests, the terms of subscription and entrance fee (if any), rules relating to the cessation of membership, the mode of altering the rules, and a statement of the “permitted hours” (k) applicable to the club (l). The secretary, in the month of January in every year, must furnish to the clerk to the justices a return, signed by the secretary, giving the above particulars, together with a signed statement that there is kept upon the club premises a register of the names and addresses of the club members, and a record of the latest payment of their subscriptions. The clerk to the justices is required to keep the register of clubs up to date in accordance with the returns furnished by the secretaries; and the register must be open, at all reasonable hours, to the inspection of an inspector or superintendent of police, or an officer of customs and excise, without payment, and of any other person on payment of a fee not exceeding one shilling (l). [576]

Sale of Intoxicating Liquor in Clubs.—In the case of a members' club, the members being joint owners of the club property, including

(f) Friendly Societies Act, 1896, s. 8 (4); 8 Statutes 938.

(g) *Ibid.*, s. 96 (2); 8 Statutes 1001.

(h) 8 Statutes 1015.

(i) Licensing (Consolidation) Act, 1910, s. 91; 9 Statutes 1036.

(k) Licensing Act, 1921, s. 13; 9 Statutes 1062.

(l) Licensing (Consolidation) Act, 1910, s. 92; 9 Statutes 1036.

the excisable liquors, the supply of such liquors to a member at a fixed price is not, as indicated on p. 246, *ante*, a sale within the Licensing Acts. The supply of such liquor in club premises for consumption off the premises, except to a member on the premises, is prohibited (*m*). If such liquor is supplied to and paid for by a person who is not a *bona fide* member of the club or his duly authorised agent, this constitutes a sale without a licence within the meaning of the Licensing Acts (*n*).

In the case of proprietary clubs, the members not being the owners of the property of the club, the supply to them of liquor at a fixed price is a sale, and the premises must accordingly be licensed if intoxicating drinks are thus supplied (*o*). [577]

Striking Club off Register.—On any of the following grounds a duly registered club may be struck off the register by order of a court of summary jurisdiction, on complaint in writing by any person, namely, (1) that the club has ceased to exist, or has less than twenty-five members; (2) that it is not conducted in good faith as a club, or is kept or habitually used for any unlawful purpose; (3) that there is frequent drunkenness on the premises; (4) that illegal sales of intoxicating liquor have taken place on the premises, or that persons who are not members are habitually admitted for the purpose of obtaining such liquor; (5) that the club occupies premises in respect of which, within twelve months next preceding the formation of the club, a justices' licence has been forfeited or the renewal of a justices' licence refused, or in respect of which an order has been made that the premises shall not be used for the purposes of a club; (6) that persons are habitually admitted as members without an interval of at least forty-eight hours between nomination and admission; (7) that the supply of intoxicating liquor to the club is not under the control of the members or the committee appointed by the members (*p*). [578]

Sale of Intoxicating Liquor in Unregistered Clubs.—Any person who supplies or sells intoxicating liquor to a member or guest on the premises of an unregistered club, and every person authorising the same, is liable on summary conviction to imprisonment, with or without hard labour, for a month, or to a fine of £50, or both; and if intoxicating liquor is kept on such premises for supply or sale, every officer and member of the club is liable to a fine of £5, unless he proves to the satisfaction of the court that the liquor was kept without his knowledge or consent (*q*). [579]

Betting and Gaming in Clubs.—The Betting Act, 1853 (*r*), does not apply to a *bona fide* club, even though the members bet with one another in a special room set apart for the purpose (*s*). But if strangers are admitted for the purpose of betting, or if the club is really kept to enable one set of members, being bookmakers, to bet with other members or with non-members, the Act applies (*t*).

(*m*) Licensing (Consolidation) Act, 1910, s. 94; 9 Statutes 1037.

(*n*) *Stevens v. Wood* (1890), 54 J. P. 742; 8 Digest 522, 114.

(*o*) *National Sporting Club, Ltd. v. Cope* (1900), 82 L. T. 352; 8 Digest 523, 118.

(*p*) Licensing (Consolidation) Act, 1910, s. 95; 9 Statutes 1038.

(*q*) *Ibid.*, s. 93; 9 Statutes 1037.

(*r*) 8 Statutes 1156.

(*s*) *Downes v. Johnson*, [1895] 2 Q. B. 203; 8 Digest 525, 130.

(*t*) *Jackson v. Roth*, [1919] 1 K. B. 102; 8 Digest 525, 132.

Club premises may be a common gaming house if large numbers of persons are invited habitually to congregate there for unlawful gaming. It is sufficient to prove that the premises are used for the purpose of playing at any unlawful game in which a bank is kept by one or more of the players exclusively of others, and that the chances of any game played there are not alike favourable to all, including the banker or other person by whom the game is managed, or against whom the other players stake, play or bet (*u*).

The following are unlawful games : chemin de fer, baccarat, ace of hearts, faro, basset, hazard, roulette, any game with dice except backgammon, all card games except games of skill, and any game of chance or of mixed chance and skill (*a*). Progressive whist, where the partners are shuffled as well as the cards, is not a game of skill (*b*).

If the club, though not a common gaming house, is open, kept or used for unlawful gaming, the owner or occupier who opens, keeps or uses it for that purpose, or knowingly and wilfully permits it to be opened, kept or used for that purpose, and also any person having the care or management of the club, or in any way assisting in the conduct of its business, or advancing money for the purpose of gaming therein, is liable on summary conviction to a penalty of £500, or twelve months' imprisonment, with or without hard labour (sect. 4) (*c*).

[580]

London.—The general law relating to clubs applies equally to London. As elsewhere, there is no necessity for a justices' licence for members' clubs in which intoxicating liquor is supplied to members or their guests, but under the Licensing (Consolidation) Act, 1910, sect. 91 (*d*), such premises must be registered in January of each year. The keeper of the register within the jurisdiction of a metropolitan police court is the clerk of the court, and in the City of London the clerk of special sessions.

[581]

(*u*) Gaming Act, 1845, s. 2 ; 8 Statutes 1146.

(*a*) *Jenks v. Turpin* (1884), 13 Q. B. D. 505 ; 8 Digest 526, 136.

(*b*) *R. v. O.K. Social and Whist Club, Ltd.* (1929), 45 T. L. R. 570 ; Digest (Supp.).

(*c*) Gaming Houses Act, 1854, s. 4 ; 8 Statutes 1164.

(*d*) 9 Statutes 1036.

COAL SHAFTS

See ROAD PROTECTION.

COAL WEIGHING

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For Administrative Local Authorities - See title WEIGHTS AND MEASURES.
The Law as to Inspection and
Verification of Scales and Weights „ WEIGHTS AND MEASURES.

Introductory.—Part II. of the Weights and Measures Act, 1889 (*a*), deals with the sale of coal by weight. Coke is not usually considered to be coal—indeed under another statute (*b*) it has been held to be a different article (*c*); but many local authorities during recent years have obtained powers under private Acts extending the provisions of the general statute to coke and other solid fuels derived from coal (*d*).

The main purpose of Part II. of the Act of 1889 is to protect purchasers of coal from short weight. It provides that ordinary sales shall be made by weight; that written or printed representations of weight shall be made by sellers; that purchasers and authorised officers of local authorities shall have facilities and powers in the matter of re-weighing loads and consignments of coal; and that those who sell or deliver coal of short weight may be prosecuted. These and other provisions are discussed at greater length below. [582]

Sale by Weight.—To the general provision that coal must be sold by weight there is an exception. A purchaser of coal by the boatload, or by wagons or tubs delivered into his works from a colliery, may consent in writing to the sale being made otherwise than by weight (*e*). [583]

Representation of Weight.—In the case of coal delivered or sold in quantities of more than 2 cwt. from a vehicle, the seller must send or deliver to the purchaser before any part of the coal is unloaded a weight-ticket or note in the statutory form (*f*). One ticket may suffice to cover deliveries on different days of parts of a large consignment (*g*). It is

(*a*) 20 Statutes 399.

(*b*) Metropolitan Streets Act, 1867, s. 15; 19 Statutes 158.

(*c*) *Fletcher v. Fields*, [1891] 1 Q. B. 790; 26 Digest 424, 1436.

(*d*) Especially the London, Middlesex, Essex and Surrey County Councils, and the corpsns. of Sheffield, Rotherham, Birmingham, Dewsbury, Middlesborough, Portsmouth, Wigan, Worksop and Chester. Many other corpsns. (including those of Blackpool, Sunderland, Stoke-on-Trent, Dudley and Barnsley) have also special powers under private Acts to regulate the sale of coke, without, however, applying to coke all those provisions of the general statute which regulate the weight of coal.

(*e*) Weights and Measures Act, 1889, s. 20; 20 Statutes 399.

(*f*) *Ibid.*, s. 21.

(*g*) *Kyle v. Dunsdon*, [1908] 2 K. B. 293; 44 Digest 140, 77; distinguishing *Stangoe v. Slatter* (1896), 60 J. P. 342; 44 Digest 140, 76; in which it was held that a purchaser must have the opportunity to check the weight of each cart-load.

lawful for a carman to make out the ticket after arriving, but before commencing to unload the coal, at the purchaser's premises (*h*).

If the coal be sold in bulk, the ticket must declare (1) the combined weight of the vehicle and the coal; (2) the tare of the vehicle; and (3) the net weight of the coal. The weight of the vehicle to be inserted in the ticket is that ascertained at the place from which the coal was brought, not the weight at the time of delivery (*i*). If the coal is in sacks, the ticket must state the number of sacks and the quantity of coal in each; but if the total quantity is of correct weight no offence is committed if some sacks are short in weight and others, forming part of the same consignment, are overweight (*k*). In any case, the ticket must disclose the name of the seller—a trading name will suffice (*l*)—and the name of the person in charge of the vehicle, with other prescribed information (*m*).

When coal is conveyed on a vehicle in bulk for delivery to a purchaser, the seller is also required to ascertain the tare weight of the vehicle and to mark it thereon in such manner as the local authority under the Weights and Measures Acts approve (*n*).

The Act itself does not require a written representation of weight to be made by the seller when the quantity sold does not exceed 2 cwt., but such a requirement is almost invariably made in bye-laws of local authorities, which commonly require a metal label, bearing a statement of weight, to be on each sack or receptacle. [584]

Provision of Scales and Weights.—A duly stamped weighing instrument with appropriate and sufficient weights (*o*) must be kept at any place where coal is sold and delivered by retail, unless such apparatus is available for use in the near neighbourhood (*p*). Further, bye-laws made by local authorities (*q*) almost always require a seller of coal to carry a weighing instrument of an approved type on every vehicle conveying coal for sale or delivery to a purchaser. Inspectors and other authorised officers of local authorities may test the weight of coal on a vehicle (*r*) or at premises (*s*), and may also require vehicles carrying coal in bulk to be re-weighed, provided that a seller of coal or carman may not be required to make for that purpose a journey exceeding half a mile or such less distance as the local authority may prescribe (*t*). Purchasers of coal have similar rights to require re-weighing, but a purchaser who has required a vehicle or its load to be re-weighed is liable to pay the reasonable costs of the test if the weight is ascertained to be correct (*u*). [585]

Local Authorities.—The local authorities enforcing the Weights and Measures Acts are: in the City of London, the Court of Common

(*h*) *Edwards v. Purnell*, [1899] 1 Q. B. 449; 44 Digest 140, 79.

(*i*) *Knowles and Sons v. Sinclair*, [1898] 1 Q. B. 170; 44 Digest 140, 82.

(*k*) *Godfrey v. Radford* (1896), 75 L. T. 224; 44 Digest 140, 81.

(*l*) *Cameron v. Tyler*, [1899] 2 Q. B. 94; 44 Digest 140, 80.

(*m*) Schedule III.; 20 Statutes 405.

(*n*) S. 22; 20 Statutes 400.

(*o*) S. 35; 20 Statutes 404; see also *Crick v. Nicholls*, [1905] 1 K. B. 501; 44 Digest 141, 90.

(*p*) S. 25; 20 Statutes 400.

(*q*) Under s. 28; 20 Statutes 401.

(*r*) S. 29; 20 Statutes 402.

(*s*) S. 25; 20 Statutes 400.

(*t*) S. 27; 20 Statutes 401.

(*u*) *Ibid.*

Council; elsewhere in London, the L.C.C.; in county boroughs, the council of the borough; in non-county boroughs, the council of the borough if (a) the borough had separate quarter sessions in 1878, (b) the borough council subsequently resolved to administer the Weights and Measures Acts, or (c) the borough in 1878 had appointed inspectors and possessed legal local standards (unless in 1881 the borough had a population of less than 10,000); elsewhere, the county council (a). [586]

Further Powers of Local Authorities—Bye-laws.—Local authorities may provide and maintain fixed or portable weighing instruments for the purpose of weighing coal (b), and may appoint persons to keep and attend to the instruments. These persons are under an obligation to weigh vehicles or loads of coal on request and are liable to a fine if they act fraudulently in the process of weighing (c).

Local authorities have power to make bye-laws fixing the fees to be charged for the use of any weighing instrument maintained by them (d). Bye-laws may also regulate generally the sale of coal in quantities not exceeding 2 cwt., and it has been held that a bye-law requiring vendors to register themselves with the authority's inspector is reasonable and valid (e). Further, bye-laws may require a weighing instrument of an approved form to be carried on a coal-cart; and may prescribe the distance beyond which coal may not be required to be carried for the purpose of being weighed.

The bye-laws made by local authorities for the general purpose of regulating the sale of coal in quantities not exceeding 2 cwt. usually deal with the following matters in addition to those mentioned above: namely, the painting of the name and address of coal-dealers on vehicles; the marking of the correct weight on all sacks and receptacles containing coal (both on vehicles and at shops); the exhibition of price tickets on vehicles and at shops (with a prohibition against sales at a higher price than that exhibited); a definite requirement that sales must be in quantities of 7, 14, 28, 56, 112 or 224 lb.; and an obligation on coal carmen to weigh sacks or loads on the demand of an inspector or purchaser.

All bye-laws require the approval of the Board of Trade and must be published in such manner as the local authority consider sufficient. In practice, local authorities are well advised to consult the Board of Trade informally and submit a draft of proposed bye-laws, before actually deciding on the precise wording of new bye-laws or submitting them for formal approval. [587]

Officers of Local Authorities.—A local authority may apparently make a bye-law requiring a coal carman to re-weigh coal (carried for sale in quantities not exceeding 2 cwt.) on the demand of an inspector, but a bye-law purporting to extend such powers to any purchaser, or any one acting on behalf of any purchaser, or any constable, has been held to be unreasonably wide and therefore invalid (f). But inspectors

(a) Weights and Measures Act, 1878, ss. 50—54, Sched. IV.; 20 Statutes 382, 393; Weights and Measures Act, 1889, s. 35; 20 Statutes 405; L.G.A., 1888, ss. 8, 39; 10 Statutes 638.

(b) Act of 1889, s. 26; 20 Statutes 401.

(c) *Ibid.*

(d) S. 28; 20 Statutes 401.

(e) *Ward v. Franklin* (1909), 101 L. T. 681; 44 Digest 141, 38.

(f) *Alty v. Farrell*, [1896] 1 Q. B. 636; 44 Digest 141, 37.

of weights and measures are not the only persons whom a local authority may empower to enforce the general provisions of the statute. Other officers may be appointed for the purpose, and in practice many local authorities give powers of enforcement to assistants in their weights and measures departments. Inspectors and other officers must not be obstructed in the performance of their duties (*g*); but a mere refusal by a coal carman to assist an inspector to re-weigh coal does not constitute obstruction (*h*), in the absence of a bye-law requiring the carman to re-weigh the coal.

Weights, scales and the like used in coal mines for the purpose of ascertaining the weight of coal gotten by miners, so that their wages may be computed, are liable to inspection by inspectors of weights and measures, who must examine all such weighing appliances at least once in every six months and at other times if they have cause to believe such inspection to be necessary (*i*). [588]

Procedure in Prosecutions.—The Weights and Measures Act, 1889, is to be construed as one with the Sale of Food (Weights and Measures) Act, 1926 (*k*), and therefore before a prosecution may be instituted against a retailer (except in the case of obstruction) it would appear necessary that certain provisions of the later Act be complied with; particularly, that within seven days after the alleged offence is committed notice in writing of the date and nature of the offence be served on or sent by registered post to the defendant, who must also have reasonable opportunity to check the alleged shortage in weight (*l*). Further, a prosecution may not be instituted after the expiration of twenty-eight days from the time of the commission of the offence.

And an employer when summoned may lay an information against a person whom he alleges to be the actual offender (*m*), but this will rarely be of any benefit to an employer charged as the seller of the coal, as the shortage in weight often results from the fault of a loader who, not being the person who sells or delivers the coal, cannot be held to be the person who "actually commits the offence in question" (*n*).

Similarly, the special defence of *bona fide* mistake or accident or other cause beyond control under s. 12 (2) of the Act of 1926, does not help a coal dealer whose servant has been negligent, for the negligence of a servant is not a cause beyond the employer's control (*n*). [589]

Offences and Penalties.—The person usually held responsible for short weight in coal and for most of the other offences under the statute is the seller of the coal, and he is the only person liable under s. 21 (2) of the Act of 1889 (*o*). But a coal carman may be convicted for failing to deliver a weight-ticket (*p*), or for wilfully defrauding either the seller or the purchaser of coal (*q*), or for obstruction (*r*). And when short weight is found in coal carried on a vehicle for sale or delivery to a purchaser, an offence is committed either by the seller or by the person in charge of the vehicle "as the case may be" (*s*). The meaning of this

(*g*) Ss. 27, 29; 20 Statutes 401, 402.

(*h*) *Swallow v. L.C.C.*, [1916] 1 K. B. 224; 44 Digest 139, 75.

(*i*) Coal Mines Regulation Act, 1887, s. 15; 12 Statutes 53.

(*k*) S. 15; 20 Statutes 426; and see, in this connection, *Hart v. Hudson Bros., Ltd.*, [1928] 2 K. B. 629; 44 Digest 133, 26.

(*l*) S. 12 (6); 20 Statutes 425; *Phillips v. Parnaby* (1934), 32 L. G. R. 270; Digest (Supp.).

(*m*) S. 12 (5); 20 Statutes 424.

(*n*) *Walking, Ltd. v. Robinson* (1929), 99 L. J. (K. B.) 171; Digest (Supp.).

(*o*) 20 Statutes 399.

(*p*) *Ibid.*, s. 21 (2).

(*q*) S. 23; 20 Statutes 400.

(*r*) S. 29 (3); 20 Statutes 402.

(*s*) *Ibid.*, s. 29 (2).

vaguely-expressed provision has been discussed on several occasions by the Divisional Court, and the general effect of the decisions seems to be as follows. If the seller has made a representation of weight, he, and not his carman, is the person responsible under sect. 29 unless there be evidence that the carman has tampered with the coal (*t*). But an innocent master is not necessarily responsible for a misrepresentation of weight by his servant (*u*), though an innocent carman who makes no representation of weight should not be convicted (*a*).

Penalties may not exceed £5, even after previous convictions, except that (1) a second offence for obstructing or hindering an inspector may involve the offender in a fine of £10 (*b*), and (2) any person found to have committed any offence under the Act with intent to defraud may be imprisoned with or without hard labour for not more than two months (*c*).

Also, justices may order the publication of any conviction if they think fit (*d*). [590]

London.—Part II. of the Weights and Measures Act, 1889 (*e*), is equally applicable to London, and the L.C.C. have made bye-laws dated June 18, 1928, in pursuance of sect. 28 of that Act and sect. 55 of the L.C.C. (General Powers) Act, 1928 (*f*), relating to the sale of coal and coke in the County of London. The bye-laws provide for regulating the sale of coal and coke in quantities not exceeding 2 cwt. They also require a weighing instrument to be carried in the vehicle in which coal or coke is carried for sale or delivery to a purchaser. The distance beyond which coal or coke is not required to be carried for the purpose of being weighed or re-weighed in pursuance of sect. 27 of the Weights and Measures Act, 1889 (*g*), is the distance of the nearest suitable and duly stamped weighing instrument, which may be available for such purpose, within the distance of half a mile. A fee of 6*d.* is chargeable for the use of any weighing instrument maintained by the county council. A penalty not exceeding £5 may be incurred for a breach of any of these bye-laws, and is recoverable summarily in manner provided by the Summary Jurisdiction Acts.

The London Coal Acts, 1831 and 1838 (*h*), applied to places within twenty-five miles of the General Post Office, and portions of these Acts are still in operation (*i*). A summary of their provisions is given in 20 Statutes 403, 404. [591]

(*t*) *Baker v. Herd* (1894), 58 J. P. 413; 44 Digest 143, 109; and *Franklin v. Godfrey* (1894), 63 L. J. (M. C.) 239; 14 Digest 41, 110.

(*u*) *Roberts v. Woodward* (1890), 25 Q. B. D. 412; 14 Digest 41, 109.

(*a*) *Paul v. Hargreaves*, [1908] 2 K. B. 289; 44 Digest 143, 110.

(*b*) S. 29 (3); 20 Statutes 402.

(*c*) S. 4; 20 Statutes 396.

(*d*) S. 14; 20 Statutes 398.

(*e*) 20 Statutes 399.

(*f*) 11 Statutes 1415.

(*g*) 20 Statutes 401.

(*h*) 1 & 2 Will. 4, c. lxxvi., and 1 & 2 Vict. c. ci.

(*i*) *Houghton v. Fear Bros., Ltd.*, [1913] 2 K. B. 343; 44 Digest 143, 108.

COAST PROTECTION

See SEA DEFENCE WORKS.

COAT OF ARMS

See ARMS, COAT OF.

COKE WEIGHING

See COAL WEIGHING.

COLD AIR STORE

See MARKETS AND FAIRS ; SLAUGHTER-HOUSES AND
KNACKERS' YARDS.

COMBINATION OF AUTHORITIES

See JOINT BOARDS AND COMMITTEES.

COMBINED DRAIN

See SEWERS AND DRAINS.

COMMERCIAL EDUCATION

See TECHNICAL AND COMMERCIAL EDUCATION.

COMMISSION OF THE PEACE

See JUSTICES OF THE PEACE.

COMMISSIONER OF POLICE OF THE METROPOLIS

See also titles : METROPOLITAN POLICE ;
METROPOLITAN POLICE DISTRICT ;
POLICE.

The Commissioner of Police of the Metropolis is the chief officer of the Metropolitan police force (see that title). In this capacity he is subject to the directions of the Secretary of State for the Home Department, who is the police authority (see title POLICE) for the Metropolitan police district ; but he appoints and dismisses (a) and has the general direction of the members of the force, and he also has various statutory powers which he exercises on his own authority (*vide infra*).

The style "the Commissioner of Police of the Metropolis" dates from the Metropolitan Police Act, 1839 (b), sect. 4 of which directed that the two justices of the peace who, by the Metropolitan Police Act, 1829, sect. 1 (c), had been placed in charge of the Metropolitan police force as established under that Act, should be known as "The Commissioners of Police of the Metropolis." By sects. 1 and 2 of the Metropolitan Police Act, 1856 (d), it was provided that there should be one commissioner and two assistant commissioners. The designation "Chief Commissioner of Police" is a misnomer. [592]

The commissioner is appointed by the Crown by warrant under the Sign Manual (e) on the recommendation of the Home Secretary, and he is *ex-officio* a justice of the peace for the counties of Middlesex, Surrey, Hertford, Essex and Kent (e), Berkshire and Buckingham (f) and London (g). He may not act as such at any court of general or quarter sessions, nor in any matter out of sessions except for "the preservation of the peace, the prevention of crimes, the detection and committal of offenders, and in carrying into execution the purposes of the Metropolitan Police Acts" (e). He is disqualified for election as a member of the House of Commons, and during his tenure of office and for six months afterwards may not interfere in Parliamentary elections (h). [593]

The Metropolitan Police Act, 1856 (d), authorised, as stated above, the appointment of two assistant commissioners ; the Metropolitan

(a) Subject to the right of appeal to the Home Secretary conferred by the Police (Appeals) Act, 1927 ; 12 Statutes 898 *et seq.*

(b) 12 Statutes 768.

(c) *Ibid.*, 743.

(d) *Ibid.*, 810.

(e) Metropolitan Police Act, 1829, s. 1 ; 12 Statutes 743.

(f) Metropolitan Police Act, 1839, s. 4 ; 12 Statutes 768.

(g) L.G.A., 1888, s. 95 ; 10 Statutes 759.

(h) Act of 1829, s. 18 ; Metropolitan Police Act, 1860, s. 5 ; 12 Statutes 750,

Police Act, 1884, s. 2 (*i*), authorised a third, the Police Act, 1909, s. 3 (*k*), a fourth, and the Metropolitan Police Act, 1933, s. 1 (*l*), a fifth assistant commissioner.

The assistant commissioners are, like the commissioner, appointed by the Crown under the Sign Manual, are justices of the peace *ex-officio* for the same counties, and are subject to the same disqualifications as the commissioner (*m*). One of the assistant commissioners holds the position of deputy commissioner, and under sects. 7 and 8 of the Metropolitan Police Act, 1856, would normally be authorised by the Secretary of State to act for the commissioner in the case of vacancy in the office or the illness or absence of the commissioner, but any of the assistant commissioners may under the statute referred to, be authorised to act for the commissioner. [594]

The Secretary of State has power, under the Police Act, 1919, s. 11 (*n*), to appoint officers of the Metropolitan police force to act as deputy assistant commissioners, and officers so appointed have, for the purpose of receiving declarations of men appointed to act as constables, the same powers as assistant commissioners. A deputy assistant commissioner is not, however, a justice of peace like the commissioner and the assistant commissioners, but an officer of the force holding the rank of deputy assistant commissioner. [595]

The salaries of the commissioner and assistant commissioners were originally fixed by statute, but they are now fixed by the Secretary of State with the approval of the Treasury (*o*). The salary of the commissioner is paid out of money provided by Parliament, and those of the assistant commissioners are apportioned between moneys provided by Parliament and the Metropolitan police fund.

For pension purposes, the commissioner and assistant commissioners and deputy assistant commissioners come under the provisions of the Police Pensions Act, 1921, sect. 25 (*p*), as amended by sect. 2 of the Metropolitan Police Act, 1933. [596]

There is a separate financial officer, the receiver, who is responsible for all receipts and expenditure and directly answerable to the Home Secretary. He is appointed by the Crown (*q*) and is a corporation sole (*r*). He acts as treasurer of the Metropolitan police fund, which is kept in his official name at the Bank of England. All police property is vested in him and all contracts are made by him. The amount of the police rate is determined by the Secretary of State on his recommendation. The police rate warrants are signed and issued by the commissioner (*s*). [597]

The commissioner is the "local authority" for the Metropolitan police district for the purpose of granting general or special orders of exemption under the Licensing (Consolidation) Act, 1910, s. 55 (4) (*t*).

(*i*) 12 Statutes 887.

(*k*) *Ibid.*, 859.

(*l*) 26 Statutes 631.

(*m*) See the Metropolitan Police Act, 1856, s. 9 ; 12 Statutes 811.

(*n*) 12 Statutes 869.

(*o*) Metropolitan Police Act, 1899, s. 1 ; 12 Statutes 858.

(*p*) 12 Statutes 885.

(*q*) Metropolitan Police Act, 1829, s. 10 ; 12 Statutes 747.

(*r*) Metropolitan Police (Receiver) Act, 1861, s. 1 ; 12 Statutes 825.

(*s*) Metropolitan Police Act, 1829, s. 23, and s. 7 of the Act of 1856 ; 12 Statutes 751, 811.

(*t*) 9 Statutes 1018.

He is empowered to issue search warrants under the Gaming Act, 1845, s. 6 (*u*), and the Betting Act, 1874, s. 12 (*w*).

In the Metropolitan traffic area (*x*) the commissioner licenses drivers and conductors of public service vehicles, tramcars and trolley vehicles under the Metropolitan Traffic Area (Drivers' and Conductors' Licences) Order, 1933 (*y*), made by the M. of T. under the Road Traffic Act, 1930, as amended by sect. 51 of the London Passenger Transport Act, 1933 (*a*). He also grants licences for cabs and drivers, and appoints cab standings (*b*). He can make regulations for the routes of vehicles on special occasions, and can give directions for preventing obstruction outside theatres, public offices, etc. (*c*). He also makes regulations restricting the days, hours and routes for the driving of cattle in specified portions of the police district (*d*). In addition, within the streets named under sect. 10 of the Metropolitan Streets Act, 1867 (*e*), by the commissioner as "special limits" (see title METROPOLITAN POLICE DISTRICT) he has power under sect. 11 of that Act to regulate traffic. [598]

(*u*) 8 Statutes 1148.

(*w*) *Ibid.*, 1161.

(*x*) A considerably wider area than the Metropolitan police district (see London Passenger Transport Act, 1933, s. 50 (1); 26 Statutes 795).

(*y*) S.R. & O., 1933, No. 628.

(*a*) 26 Statutes 796.

(*b*) London Hackney Carriages Act, 1850, s. 4; 19 Statutes 143.

(*c*) Metropolitan Police Act, 1839, s. 52; 19 Statutes 118.

(*d*) Metropolitan Market Act, 1857, c. cxxxv.

(*e*) 19 Statutes 156.

COMMITTEE CLERKS

See STAFF.

COMMITTEE, GUARDIANS

See GUARDIANS COMMITTEE.

COMMITTEE, PUBLIC ASSISTANCE

See PUBLIC ASSISTANCE COMMITTEE.

COMMITTEES

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See also titles :

AGRICULTURAL COMMITTEES ; ALLOTMENTS COMMITTEES ; ASSESSMENT COMMITTEES ; CENTRAL VALUATION COMMITTEE ; COUNTY VALUATION COMMITTEE ; EDUCATION COMMITTEE ; FINANCE COMMITTEE ; GENERAL PURPOSES COMMITTEE ; GUARDIANS COMMITTEE ; JOINT ACTION ; JOINT BOARDS AND COMMITTEES ; JOINT POOR LAW COMMITTEES ; JOINT VAGRANCY COMMITTEES ;	LIBRARY COMMITTEE ; METROPOLITAN BOROUGH STANDING JOINT COMMITTEE ; NATIONAL HEALTH INSURANCE COM- MITTEES ; OLD AGE PENSIONS COMMITTEES ; PUBLIC ASSISTANCE COMMITTEE ; PUBLIC HEALTH AND HOUSING COM- MITTEES ; STANDING JOINT COMMITTEES ; WATCH COMMITTEE ; WORKS COMMITTEE.
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PRELIMINARY OBSERVATIONS

A committee is defined in the Oxford Dictionary as a "body of persons appointed for special functions by a (usually larger) body."

It is obviously impossible for local authorities to transact all their detailed business in full council assembled. Hence they adopt the expedient of appointing various committees and of delegating to them many of their powers and functions. Committees are the real workshops of local government. They may either be invested with power to act, or they may merely have the council's instructions to prepare schemes and submit them to the council for approval.

When executive powers have been granted to committees it is customary for them to report to the council for its information as to the manner in which such powers have been exercised. When, on the other hand, executive powers have not been granted, it is the province of the committee to make recommendations to the council with regard

to the specific duties under their charge. If such recommendations are adopted by the council, it naturally falls to the committee concerned to implement them. [599]

Committees may be divided into two main categories :

- (1) statutory or compulsory committees ; and
- (2) permissive committees, *i.e.* committees which the council may appoint if it so desires.

Certain classes of local authority are required by statute to appoint committees for certain purposes, *e.g.* a county council is required to appoint a Finance Committee (a) ; a borough council with a separate police force must appoint a Watch Committee. In the absence of statutory requirement, local authorities are free to organise their work as they think best. By sect. 85 (1) of the L.G.A., 1933 (b), the councils of counties, boroughs, districts and parishes are empowered *first* to appoint committees for such general or special purposes as in their opinion would be better regulated and managed by means of a committee, and *secondly* to delegate (with certain exceptions referred to later) any of their functions to such committees, with or without restrictions or conditions as they think fit.

The number and designation of these committees will, of course, vary with the functions which are imposed by statute on different types of local authority.

This variance has been all the more marked because prior to the L.G.A., 1933, there was a lack of uniformity in the powers of different classes of authority in respect of the appointment of committees. For example, membership of a committee of a borough council appointed under sect. 22 of the Municipal Corpns. Act, 1882 (c), was confined to members of the council and the committee had to submit their acts for the approval of the council. When sect. 22 was applied to county councils, an important variation was introduced by sect. 82 (2) of the L.G.A., 1888 (d), under which a committee of a county council had to report its proceedings to the council ; but to such extent as the council might direct, the acts of the committee were not required to be submitted to the council for approval. [600]

This and other discrepancies which previously existed have now been remedied by the single code applicable to all types of local authorities contained in Part III. of the L.G.A., 1933. The main features of that code are as follows :

- (a) Local authorities are given a general power of appointing committees and of determining the number of members of each committee and its term of office. Persons who are not members of the authority may be appointed, but at least two-thirds of the members of the committee must be members of the authority. (This provision widens the existing powers of county and borough councils, but restricts those of district and parish councils.)
- (b) Local authorities may delegate, with or without restrictions, any of their functions to committees, except powers of rating and borrowing.
- (c) Local authorities may make standing orders for regulating the proceedings of committees.

(a) L.G.A., 1933, s. 86 (1) ; 26 Statutes 353.

(c) 10 Statutes 588.

(b) 26 Statutes 352.

(d) *Ibid.*, 753.

- (d) Members of committees who are not members of the local authority are to be subject to the same disqualifications (including disability on account of interest from voting and taking part in proceedings) as members of the authority.

This code takes the place of the general powers of appointing committees in the P.H.A., 1875 (e), the Municipal Corpn. Act, 1882, and the L.G. Acts of 1888 and 1894 (f); in order to avoid overlapping with special powers in other Acts a saving has been inserted in sect. 85 (5) of the L.G.A., 1933, the effect of which is to prohibit the appointment under the new powers conferred by that section of a committee for any purpose for which the local authority are authorised or required to appoint one by any other enactment. [601]

Local authorities have, in addition, wide powers of appointing joint committees for the transaction of business in which they are jointly interested with other authorities (see titles JOINT ACTION and JOINT BOARDS and COMMITTEES.) [602]

GENERAL OUTLINE

The organisation of committees may follow one of these two basic principles :

- (1) the vertical principle—according to services, under which committees may be empowered to conduct and control all matters relating to a particular service, *e.g.* education, police, electricity, etc.; or
- (2) the horizontal principle—according to subject-matter, *e.g.* salaries and staffing, centralised purchasing or law and parliamentary—under which committees may be empowered to deal with a particular subject, no matter under what service it arises.

Local authorities may, therefore, organise their work either by entrusting one committee with the management of a whole service or alternatively, by appointing a committee to consider all cognate matters, whatever the services may be, in connection with which they arise.

[603]

The third type of committee, which is appointed on the horizontal or vertical principle, is the special committee which is often set up by a local authority to deal with a particular problem, *e.g.* most county councils and county borough councils appointed a L.G.A. committee to consider the various problems arising under the L.G.A., 1929.

[604]

In some cases the local authority has no option as to the principle which it may adopt; thus, sect. 86 of the L.G.A., 1933 (g), imposes, in one instance, the horizontal system on county councils by making it obligatory on them to appoint a Finance Committee for regulating and controlling the finance of the county, and by providing that no costs, debt or liability exceeding £50 shall be incurred by the council except upon a resolution of the council passed on an estimate submitted by its Finance Committee. In addition there are spheres of administration such as the purchase of stores, appointment of officials, payment of wages, where although it is not obligatory, it is clearly desirable to appoint committees on the horizontal system. [605]

(e) 13 Statutes 623 *et seq.*
(g) 26 Statutes 576, 686.

(f) 10 Statutes 353, 773 *et seq.*

In general, it may be said that while most local authorities have organised their committee system on the vertical basis some alteration in the horizontal system is necessary in order to secure co-operative action in kindred matters. The principal disadvantage of the horizontal system is the necessity which it involves for constant intercommunications between different committees. The difficulty which local authorities experience in co-ordinating their work has been increased by the obligation imposed on them by statute of appointing *ad hoc* committees, which often prevents the most efficient arrangements for carrying out their various functions. [606]

Standing Orders.—The means by which a local authority governs its own procedure are known as Standing Orders. Para. 4 of Part V. of the Third Schedule to the L.G.A., 1933 (*h*), empowers local authorities to make standing orders, subject to the provisions of that Act, for the regulation of their proceedings and business and to vary or revoke any such orders. These are usually divided into two main categories :

- (1) those which govern the authority and its committees ; and
- (2) those which deal with questions of principle affecting the actions of all committees or the actions of the authority itself.

As an example of Class (1) we may take the following :

“ Minutes shall be kept of the proceedings of every meeting of a committee and shall be submitted for approval at the next ordinary meeting of the committee.”

As an example of the second category, we may cite a standing order relating to tenders :

“ Except where otherwise provided, all tenders shall be invited by advertisement.”

The powers and duties entrusted to a particular committee are defined in what are known as orders of reference to committees.

The careless drafting of orders of reference may give rise to a great deal of avoidable work, and it is essential, therefore, that these should be as clear-cut as possible so that the functions and powers of different committees may be laid down in clear and unmistakable terms.

When the council, on the recommendation of a committee or otherwise, passes a resolution which is in the nature of a standing instruction or order, it is usual for the town clerk or clerk to report this to the next following meeting of a co-ordinating committee such as a General Purposes Committee, and for that committee in due course to submit to the council a suitably worded standing order giving effect thereto.

Orders of reference should be both concise and comprehensive. They must not on the one hand permit the possible overlapping of duties between different committees, and on the other hand there must not be left room for doubt as to the precise scope and extent of the duties of a particular committee. For example, here is an order of reference to an Electricity Committee :

“ *All matters relating to the lighting of the borough and to the supply of electricity shall be under the supervision of this committee.
The committee shall be empowered to take proceedings for the recovery of outstanding accounts.*” [607]

(*h*) 26 Statutes 501. See also s. 96 ; 26 Statutes 357, as to standing orders regulating committees.

Rules of Committees.—It is, generally speaking, open to every committee to regulate its own procedure provided that such regulations do not conflict with any standing orders made by the council under sect. 96 of the L.G.A., 1933 (*i*), or other orders made by them.

Rules of committees may deal with :

- (1) their procedure, quorum, time and place of meetings, etc. ;
- (2) minor general instructions for their own guidance, or the guidance of officials governing the procedure of the officials on services upon which they are employed.

It is obviously desirable that the different committees of a council should be governed by uniform rules and procedure, and many councils adopt the expedient of applying their own standing orders to their committees, with modifications when necessary. [608]

Sub-committees.—The detailed work of committees often necessitates the further elaboration of administrative machinery by the appointment of sub-committees. The committee cannot, however, delegate to any sub-committee or to any of its members any of the powers delegated to it by the council. Recommendations of such a sub-committee must, therefore, be confirmed by the full committee before they can be implemented, unless the council has given its express authority to a sub-committee to act. [609]

CONSTITUTION OF COMMITTEES

What Committees must and may be appointed.—As we have seen, there are certain committees which different classes of local authorities are compelled, by statute, to appoint.

Statutory Committees.—During the last thirty years the legislature has adopted a regular policy of prescribing the constitution of committees, of laying down in particular outline how these committees are to be formed, and in some cases requiring the approval of a Government department to the schemes made by local authorities in pursuance of the statute.

Examples of such statutory committees are Education Committees, the Agricultural Committees of county councils and the Public Assistance Committees of county and county boroughs.

A complete list of the statutory committees which must be appointed by county councils, county borough councils, non-county borough councils and district councils will be found in the Table appended to this Article on pp. 283—291, *post*. [610]

Permissive Committees.—Apart from statutory committees a local authority may, as we have seen, appoint such other committees for any such general or special purposes as in its opinion would be better regulated and managed by means of a committee. The number and names of committees necessarily vary in accordance with the size of the authority, and the undertakings which it controls ; and there is considerable divergence in practice among different authorities with regard to the scope of work with which committees are charged. In setting up their committees, the council must decide whether the unit of committee organisation should be the specific service rendered to the public, or whether it should be based on the staff organisation required to provide the services.

As an illustration of the way in which work of a council is divided, a typical list of the committees of a county borough council, excluding the compulsory statutory committees, is as follows :

General Purposes Committee.
 Parliamentary Committee.
 Highways and Public Works Committee.
 Improvement Committee.
 Estates Committee.
 Housing Committee.
 Town Planning Committee.
 Health Committee.
 Cleansing Committee.
 Water Committee.
 Gas Committee.
 Electricity Committee.
 Markets Committee.
 Cemetery Committee.
 Parks and Gardens Committee
 Libraries Committee.
 Rating and Valuation Committee.
 Baths Committee. [611]

Co-ordination between Committees. *Existing Arrangements for Co-ordination.*—An inherent danger in the committee system is that individual committees may regard themselves as separate authorities and fail to co-ordinate their work with the work of other committees.

How may such lack of co-ordination be best avoided ?

There are four principal ways in which co-ordination is at present effected between the committees of local authorities :

(1) The Finance Committee of each authority has the supervision of (although not a veto on) the finance of spending committees. Each committee generally draws up and discusses its own estimates in detail and then passes them on to the Finance Committee and finally to the whole council for approval.

In the case of county councils sect. 86 of the L.G.A., 1933 (j), provides that no costs, debt or liability exceeding £50 shall be incurred except upon a resolution of the council passed on an estimate submitted by the Finance Committee. Some other classes of local authorities, upon whom such a regulation is not imposed by statute, have incorporated in their standing orders a similar provision.

The following standing orders, for example, are in force in one large county borough and the standing orders of many large local authorities are similar in effect :

No committee shall incur any capital expenditure or recommend an application to a Government department for borrowing powers without first submitting a detailed report to the Finance Committee, stating the annual charge for interest and sinking fund and other annual expenditure which will be involved and the probable income (if any) which will accrue from the proposed capital outlay. The Finance Committee shall present the same to the council (after consultation with the chairman or other representative of the committee

whose expenditure is in question) with such statements and observations as it may deem necessary or desirable, including all necessary information with regard to existing borrowing powers, and the expenditure shall not be incurred until approved and authorised by the council.

No committee shall

- (a) incur any expenditure on rate or revenue account exceeding £100 on any works or services which have not already been sanctioned by the council ;
- (b) propose a new or increased scale of pay, pension, bonus, or allowance to its employees ;
- (c) recommend the council to approve in principle any expenditure exceeding £500 ; or
- (d) recommend an application to Parliament for powers, the exercise of which would involve expenditure by the council ;

without first submitting to the Finance Committee an estimate of the total costs, debt, or liability proposed to be entered into. The Finance Committee shall present the same to the council without delay, with any observations it may wish to make upon its financial bearings. Such estimate, if approved by the council, shall in due course be included in the annual estimates of the ensuing financial year. Provided that this clause shall not apply to the trading committees.

(2) The town clerk or clerk has cognisance of the work of all the committees. His department fulfils the function (*inter alia*) of acting as a kind of secretariat of the council as a whole. The town clerk or clerk himself acts as a liaison officer between committees and the other chief officers of the council (k).

(3) A further co-ordinating factor occurs through members of the local authority being members of several committees.

(4) Ultimately the council itself must be regarded as the supreme co-ordinating authority, and must settle any disputes and differences which may arise between any of its committees. [612]

Co-ordinating Committee.—A most expedient method of procuring a closer co-operation between committees is available by the appointment of a general committee composed of a small number of members of the council, whose terms of reference would be to consider the whole field of the powers and duties of the council, and to allot to each committee such functions as that committee can suitably exercise. The committee might consist, for example, of one member from each standing committee together with the mayor or chairman and deputy mayor, but it would be preferable to elect a few members, say, six or seven, who have an outstanding knowledge and practical experience of local government, and could consequently better define and classify the powers and functions to be exercised by the various committees.

The committee would sit at the beginning of each year and review the changes in circumstances and the increase or other alteration in the number of duties to be carried out by the council during the past year, and again, if necessary, at each time that the legislature or a Government department places on the shoulders of the council fresh duties, when the committee would consider the nature of the duties,

(k) See Final Report of the Royal Commission on Local Government, p. 159.

and determine which existing committee could best undertake the work, or if necessary, propose that a new committee or new committees should be formed. [613]

Who can serve on a Committee.—As pointed out on p. 260, *ante*, Part III. of the L.G.A., 1933, now provides a code as to the appointment of those committees which are not subject to special statutory provisions, and allows persons who are not members of the council to be appointed to any committee set up under sect. 85 of that Act (1). But where the composition of a committee for some purpose is governed by a special enactment which contemplates that the committee will be composed of members of the appointing council only, the personnel of the committee must be drawn solely from among those members. As may be seen from the table on pp. 283—291, *post*, various statutes make obligatory the appointment of a certain number of persons from outside the council upon some statutory committees, and in some cases prescribe further the class of person who is so to be appointed—persons, for example, who have special knowledge of the particular duties with which the committee is charged.

Sect. 28 of the Mental Deficiency Act, 1913 (*m*), to take one instance, compels a county council to appoint on their committee for the care of the mentally defective, persons having special knowledge of the care of defectives, of whom some must be women. But a majority of the total number of members of the committee must be members of the council.

In the case of other statutory committees, the appointment of outside members is merely permissive. One example may be cited in the constitution of Public Assistance Committees under sect. 6 of the L.G.A., 1929 (*n*), where the administrative scheme *may* provide for the inclusion in the Public Assistance Committee of persons who are not members of the council, some of whom *shall* be women. This power is permissive, but, if the scheme provides for outside members, the council are bound to appoint some women.

Again, a statute may deny to a local authority the power of co-option altogether. This is done by sect. 86 (1) of the L.G.A., 1933, under which county councils must appoint finance committees consisting of such members of the council as they think fit.

The provisions of sect. 85 (1) of the L.G.A., 1933, apply to all committees other than those which the local authority are authorised or required to appoint by any other enactment. They authorise the inclusion on such committees of persons who are not members of the local authority, but provide that at least two-thirds of the members of every such committee shall be members of the local authority.

In practice, the power of appointing outside members, where it is permissive, is not widely made use of, except in respect of such committees as the Public Libraries Committee or the Museums and Art Galleries Committee, where the special knowledge of experts is frequently obtained by this means. It is customary for the council by resolution to provide for the constitution of various committees, to define their size and to decide whether outside persons shall or shall not be appointed.

Examples of different types of resolutions are appended. [614]

(1) 26 Statutes 352.

(*m*) 11 Statutes 176. In part repealed by the Mental Treatment Act, 1930; 23 Statutes 154.

(*n*) 10 Statutes 886. Repealed by the Poor Law Act, 1930; 12 Statutes 968; but the schemes were made before the repeal operated.

IMPROVEMENT COMMITTEE.—*The committee shall consist of twelve members of the council appointed by the council.*

As the Improvement Committee is not a statutory committee, the council could, if they thought fit, have provided that not more than four members of the committee should be appointed from outside persons. In this case, they did not exercise this power. [615]

PUBLIC LIBRARIES COMMITTEE.—*The committee shall consist of twelve appointed members, of whom two may be appointed from outside the council, if the council so determine after due notice of motion.* [616]

PUBLIC HEALTH AND MATERNITY AND CHILD WELFARE COMMITTEE.—*The committee shall consist of fifteen appointed members, of whom not more than one-third may be persons specially qualified by training or experience in subjects relating to health and maternity who are not members of the council, and at least two members of the committee shall be women.*

Provided that any members of the committee who are not members of the council shall act only in connection with maternity and child welfare.

(This is an example of the combination of a statutory with a non-statutory committee. By sect. 2 of the Maternity and Child Welfare Act, 1918 (o), every council exercising powers under that Act or under sect. 2 of the Notification of Births (Extension) Act, 1915, must establish a Maternity and Child Welfare Committee which may be an existing committee of the council or a sub-committee of an existing committee.) [617]

GENERAL PURPOSES COMMITTEE.—*The committee shall consist of the chairman, or if the chairman declines to act, of one appointed representative from each of the standing committees of the council, with the addition of twelve members appointed by this council. The appointment of an appointed member of this committee as chairman of another committee shall create a casual vacancy on this committee.*

It has been the practice in a number of districts to insert in standing orders a provision to the effect that in cases of urgency the General Purposes Committee or the Finance Committee (as may be appropriate) may order the common seal to be affixed to a document giving effect to a previous decision of the Council without waiting for the approval of the Council to such order, provided nevertheless that the resolution of the committee directing the sealing of such document must be submitted to the council at their next ensuing meeting.

In some councils the General Purposes Committee consists of the whole of the members of the council. This arrangement is useful as it enables a council, when it so desires, to sit *in camera*, since the Act of 1908 as to the admission of the Press (see *post*, p. 278) does not apply to committees.

The Final Report of the Royal Commission on Local Government states on p. 160 (para. 47) that it would be desirable for local authorities to consider by what procedure the publicity given to invidious discussion of personalities in connection with questions relating to salaries and promotions of individual officers might be minimised.

A provision in standing orders that the General Purposes Committee shall consist of the whole members of the council obviously affords one way of avoiding such public discussions. [618]

PUBLIC ASSISTANCE COMMITTEE.—The following is a typical constitution of a Public Assistance Committee:

The Public Assistance Committee is established by a scheme under Part I. of the L.G.A., 1929.

The committee consists of 56 members : 36 appointed by the county council from among its members ; 13 appointed by the county council after considering the recommendations submitted to them by other bodies ; 3 women appointed directly by the county council ; and 4 ex-officio members consisting of the chairman of the county council, the chairman of the Finance Committee of the county council, the chairman of the Public Health and Housing Committee of the county council, and the chairman of the Education Committee of the county council.

The standing orders of councils also usually fix a limitation of the number of committees on which a member may serve, and provide that the mayor (or chairman) shall be an ex-officio member of all committees. [619]

How Committees are appointed.—As we have seen, the local authority, by resolution, define the framework of their committees, *i.e.* decide upon the size of the various committees, and to what extent, within the statutory limits, outside members are to be appointed.

How is the actual membership of the committee determined ?

As soon as possible after the date when the authority is elected, the town clerk or clerk of the authority usually sends to each member a form of questionnaire inquiring upon which committees he is able and willing to serve. The form of questionnaire contains a list of the standing committees and indicates the time, date and frequency of their meetings, and members are usually asked to indicate the order of preference by placing the figures 1, 2 and 3, etc., after the committees upon which they signify their desire to serve. The replies received are then summarised by the town clerk or clerk and submitted by him to a special selection committee. Among some councils, this procedure is provided for and the constitution of the special committee is defined by standing orders. In some cases it is provided that the special committee shall consist of such members of the then existing General Purposes Committee as are still members of the council after the election; or it may be provided that the selection committee shall consist of the chairmen of the standing committees. [620]

Where the matter is not provided for in standing orders, the authority may pass a resolution of which the following is an example :

RESOLVED :

- (1) *That such members of the late respective standing and special committees as are now members of the council shall constitute those committees respectively until the next ordinary meeting of the council.*
- (2) *That a circular be sent to the members of the council informing them of the time and frequency of the meetings of each of the committees and inquiring upon which of such committees they are willing to serve if elected, and the order of preference.*
- (3) *That the replies of members when received be referred to a special committee to be appointed to select names of members to serve on the several committees.*
- (4) *That the special committee do consist of the following members of the council.* [621]

The selection committee submit to the next meeting of the council a report making recommendations as to the membership of the standing and special committees of the council for the ensuing year. [622]

It frequently happens that in the list of members as set out there occur vacancies. For example, only ten members may have signified their willingness to serve on a committee which must consist of twelve members. In such cases, the gaps are filled by the council, who may also, if they think fit, alter or modify the recommendations as to constitution made by the selection committee.

At any time the council may, of course, appoint a new special committee or standing committees. Similarly, it may dismiss a recalcitrant committee; *e.g.* a statutory finance committee which refuses to submit an estimate. [623]

Life of Committee.—The powers of every committee continue until the committee is discharged or a successor appointed. Standing committees are usually appointed for one year; special committees, whose functions may be the supervision of the carrying out of a particular scheme, *e.g.* the erection of a new town hall or the making of a report on an Act of Parliament affecting the local authority, usually continue in existence until their terms of reference have been discharged. Such committees are usually dissolved by a resolution of the council. [624]

Term of Office of Member.—Unless the term of office of the members of a committee has been limited by the council or by some enactment applying to the committee, such of the members of the committee as are members of the council would remain in office until they retired or otherwise ceased to hold the office of member of the council. But as respects committees appointed under sect. 85 of the L.G.A., 1933 (*p*), sub-sect. (4) of the section contains a new provision to the effect that a member of a council who has been re-elected such a member, not later than the day of his retirement, shall not cease to be a member of the committee by reason of his retirement as a member of the council.

The term of office of a member of a committee who is appointed from outside the council is usually indicated when the appointment is made, but if no term of office is prescribed, he would, in the absence of any enactment limiting the period of office, hold office until he resigned, died or became disqualified. [625]

Disqualification.—A person who is disqualified under Part II. of the L.G.A., 1933, for being elected or being a member of a council is by sect. 94 of that Act (*q*) disqualified for being a member of a committee or sub-committee of that council, whether the committee are appointed under Part II. of the Act of 1933, or under any other enactment. But a person is not disqualified for being a member of an education committee, or of a committee for the care of the mentally defective, or of a public library committee, by reason only of his being a teacher or holding any other office in a school or college which is aided, provided or maintained by the council appointing the committee.

The various disqualifications for holding the office of member of a council are referred to in the titles relating to councillors, see *e.g.* the title **BOROUGH COUNCILLOR**, at pp. 165—168 of Vol. II.

Sect. 94 of the L.G.A., 1933, also applies to committees and sub-committees the procedure, set up by sect. 84 of that Act (*r*), whereby a local government elector may institute proceedings in the High Court or a court of summary jurisdiction, if a member of a council has acted

as such when disqualified. This procedure is described on pp. 168—170 of Vol. II. [626]

Interest in Contracts.—Similarly sect. 95 of the L.G.A., 1933 (*s*), applies to members of a committee or sub-committee of a local authority, appointed under any enactment, the provisions of sect. 76 of that Act, requiring a member of a council, who is present at a meeting and has any direct or indirect pecuniary interest in any contract, proposed contract or other matter, which is under consideration, to disclose the fact and to refrain from taking part in the consideration or discussion of, or vote on any question with respect to the matter.

A summary of sect. 76 of the Act of 1933 will be found on pp. 170—172 of Vol. II. Sub-sect. (9) of that section as applied allows a council by standing orders to provide for the exclusion of a member of a committee or sub-committee from a meeting of that body, whilst any contract, proposed contract or other matter, in which he has a pecuniary interest is under consideration.

Disclosures of interest are by sect. 76 (5) of the Act of 1933 (*t*) to be entered in a register kept by the clerk. Apparently it is not contemplated that a separate register should be kept for committees and sub-committees, apart from that relating to members of the council, because sect. 95 (*a*) of the Act (*a*), limits the right of inspection of the register by members of a committee or sub-committee, who are not also members of the council, to entries relating to members of the committee or sub-committee. [627]

Resignation from Committee.—Any member of a committee may, if he so desires, resign his membership at any time. It was decided in *R. v. Sunderland Corpn.* (*b*), that the rule of the common law that a person who is qualified cannot refuse to serve in a public office to which he is appointed, does not apply to the appointment of a member of a borough council to serve on a particular committee of the council. Membership of a committee is not an independent public office, and a person who is appointed to serve on a committee may lawfully resign against the wish of the council who appointed him. [628]

FUNCTIONS OF COMMITTEES

Terms of Reference.—The terms of reference of each committee are sometimes defined in the council's standing orders, but many councils fix by resolution the terms of reference of each committee on the appointment of the committee. If in the resolution appointing the committee the council specifies in detail the duties delegated to the committee, it ensures that any new duties imposed upon local authorities by Parliament from time to time are delegated to the proper committee. The following is an example of a resolution appointing and defining the duties of the parliamentary committee of a county council :

“RESOLVED.—*That a committee be appointed to be called the Parliamentary Committee. That the powers and duties of the committee be to consider all bills that may be introduced into Parliament connected with the powers, rights and duties of the county council, or relating to the*

(*s*) 26 Statutes 357.

(*a*) *Ibid.*, 357.

(*b*) [1911] 2 K. B. 458 ; 75 J. P. 365 ; 33 Digest 61, 373.

(*t*) *Ibid.*, 347.

interests of the county or any portion thereof, and to take such steps and incur such expenditure (within approved estimates), as they may think desirable in the interests of the county council.

RESOLVED.—*That the committee be also directed to give its attention to all Parliamentary Committees of Inquiry and Royal Commissions on matters relating to county business; that such committee be also authorised and empowered to attend any local inquiry which may at any time be held under sect. 54 of the L.G.A., 1888 (c), and to take such steps in regard thereto as may be deemed expedient, and that all applications under sect. 57 of the said Act (d), and all applications and all matters and things (other than those specifically referred to the Finance and Public Health and Housing Committees respectively) under the L.G.A., 1894, required to be performed by a county council, be also referred to this committee.*

RESOLVED.—*That, with the view of removing any difficulties which may arise in the holding of the elections under and in pursuance of the L.G.A., 1894, and the election rules of the Home Secretary, the county council hereby delegate to the Parliamentary committee all the powers conferred on a county council by the L.G. (Elections) Act, 1896 (e).*

RESOLVED.—*That the committee shall also consider all questions arising under the Ancient Monuments Consolidation and Amendment Act, 1913 (f).*

RESOLVED.—*That such committee do consist of . . .”*

It should be noted that the references to various L.G. Acts in these resolutions should in future be replaced by references to the corresponding sections of the L.G.A., 1933, by which the earlier provisions are superseded.

It is a good thing for councils to review from time to time their committee system as a whole and so to secure, where desirable, a redistribution of work among different committees on the most efficient lines. [629]

Delegation.—With certain exceptions to be mentioned later, councils are free to decide how much power shall be delegated to each committee. These decisions are usually incorporated in the resolutions by which the various committees are appointed. For example, the following resolution defines the duties delegated to a Maternity and Child Welfare Committee :

“ All matters relating to the exercise of the powers of the council as to maternity and child welfare (except the power of raising a rate or of borrowing money) shall stand referred to this committee, and the council before exercising any such powers shall, unless in its opinion the matter is urgent, receive and consider the report of the committee with respect to the matter in question.”

In some cases the delegation is general, as in the following reference to a Public Libraries Committee :

“ To carry into effect the provisions of the Public Libraries Acts.”

In others it is detailed and specific as in the following extract from the terms of reference to a Highways Committee :

“ Also to carry out and enforce the following provisions contained in the P.H.A., 1925 : sect. 13 (street bins), in common with the Cleansing

(c) 10 Statutes 730.

(e) 7 Statutes 545.

(d) *Ibid.*, 732.

(f) 12 Statutes 392 *et seq.*

Committee; sect. 14 (public drinking fountains, seats, etc., in streets), in common with the Town Hall Committee; sect. 15 (fire alarms), in common with the Watch Committee." [630]

The substance of the standing orders of different authorities varies very considerably and it is only possible here to deal with the principles of delegation.

Committees must keep within the scope of the powers and duties entrusted to them. Otherwise their acts will be *ultra vires*. Where, however, a committee act within the scope of their terms of reference, but without having obtained the approval of the council to certain acts, such approval may be subsequently given by the council which will thereby ratify what has been done (g).

Generally speaking, a council adopts one of two courses as respects delegation of its powers. It either grants absolute executive power to a committee and contents itself with receiving a report of the action taken by the committee, or it merely delegates power to supervise certain functions and duties and only permits the committee to take executive action thereon after their recommendations to the council have been approved.

In most cases where a statute provides that a committee must be appointed, the council is not permitted to act except upon the recommendation of the particular committee or on the consideration of a report which it brings up. This restriction, however, does not oblige the council to delegate any of its powers to the committee. It may do so if it wishes; but it can, if it so decides, refrain from granting to the committee any executive powers and compel them to await the council's confirmation before proceeding upon any course of action. In practice, however, wide powers are usually delegated to committees for the simple reason that, if they were not, the local authority's work would be so hampered and restricted owing to the delay involved in waiting for the council's sanction to proceed as seriously to impair efficiency. Moreover, much of the work of committees involves work of so urgent a character that, to be effective, action must be taken with great promptitude. This would be impossible if the council adopted a jealous attitude and refrained from delegating its functions to committees.

Delegation, moreover, is not only advantageous to the council, but is of great assistance to officials in the efficient and expeditious conduct of the council's business. Where a system of delegation is in force, the responsible officials are enabled to carry out the instructions of a committee immediately after the committee has come to a decision on any particular matter instead of having to wait until the council has authorised them to proceed. Particularly in cases where a contract has to be accepted or important negotiations are proceeding, the prompt action which a system of delegation makes possible is of the utmost value and importance. Many advantageous settlements which have been previously made by committees have fallen through owing to the delay entailed in waiting for confirmation by the council or because of some debate in public.

No council can delegate to a committee powers which it does not itself possess. This may seem a truism, but it follows that no two small urban district councils, for example, can by forming a joint committee to which they delegate their powers in respect of a particular

matter exercise wider powers than those possessed by the constituent urban district councils.

The delegation of powers by a council to a committee is not an absolute resignation of powers to the latter, and they may be resumed by the council at any time. See the decision in the case of *Huth v. Clarke (h)*, in which the facts were as follows :

The duly appointed executive committee of a county council (which by virtue of the L.G.A., 1888, was the authority for the purpose of the Contagious Diseases (Animals) Acts) made an order delegating to local sub-committees its powers under those Acts and under certain Orders in Council including the Rabies Order, 1887. Subsequent to such delegation, the executive committee without expressly revoking the delegation, issued certain regulations under the Rabies Order, 1887, as to the muzzling of dogs and keeping them under control. No regulations under that order had been issued by the local sub-committee. It was held that the delegation was *not* equivalent to a resignation by the executive committee of its own powers, that these could be resumed at any time, and that the regulations were, therefore, valid.

In his judgment Lord COLERIDGE, C.J., stated : " Delegation does not imply a denudation of power or authority. . . . The word ' delegation ' implies that powers are committed to another person or body which are as a rule always subject to resumption by the persons delegating. . . . Unless, therefore, it is controlled by statute, the delegating power can at any time resume its authority."

The question is also dealt with very lucidly in the judgment of WILLS, J. : " Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself."

" The best illustration of the use of the word is afforded by the maxim *delegatus non potest delegare* as to the meaning of which it is significant that it is dealt with in Broom's Legal Maxims, under the Law of Contracts ; it is never used by legal writers so far as I am aware, as implying that the delegating person parts with his power in such a manner as to denude himself of his rights. If it is correct to use the word in the way in which it is used in this maxim, as generally understood, the word ' delegate ' means little more than an agent. The notion, therefore, that the use of the word ' delegate ' implies that the executive committee parted with their own authority is misconceived."

Where powers are delegated to a Public Assistance Committee under an administrative scheme there may be some difficulty about resumption of powers by the council unless the clause affecting the delegation is carefully drafted. Such a clause may be drafted in the following terms :

" *The functions set out in the first schedule hereunto annexed shall be from the day of delegated, subject to the restrictions therein mentioned, to the Public Assistance Committee until the council otherwise resolve.*"

In the case of the Watch Committee of a borough council various matters relating to the control (other than financial) of the police are by statute placed under the control of the committee itself and are not subject to revision or confirmation by the council (*i*). [631]

(h) (1890), 25 Q. B. D. 391 ; 33 Digest 17, 63.

(i) See M.C.A., 1882, s. 191 ; 10 Statutes 636.

Limitations to Delegation.—(1) No council has authority to delegate to any committee the power of levying or issuing the precept for a rate or of borrowing money. The effect of this is that all committees are dependent on the council for the moneys which they wish to spend.

Councils, however, usually allow their committees to incur expenditure from day to day provided that the estimates are not exceeded, but if a committee wishes to begin some important scheme, even one for which provision has been made in the estimates, the council stipulates that it shall first ask for the special approval of the council. [632]

(2) A committee may appoint whatever sub-committees it may think useful, but it may not delegate to them any of the powers delegated to it by the council (*k*). This is expressed in the maxim *delegatus non potest delegare*. In its application to the appointment of sub-committees it means that a sub-committee may only act if the council itself has given it express authority; otherwise, the functions of a sub-committee are only to make recommendations.

It frequently happens, however, that a council recognises a sub-committee (*e.g.* a Maternity and Child Welfare Sub-Committee) as a standing sub-committee, and such a body is therefore in direct relationship with the council. [633]

The powers of delegation provided by sect. 85 of the L.G.A., 1933, do not extend to committees set up under other statutory authority. The compulsory committees enumerated on pp. 283—291, *post*, for instance, are all governed by the statutes under which they are constituted, and to them the Act of 1933 does not apply.

When councils go into recess it is a common practice for them to delegate to the chairmen and vice-chairmen of the standing committees certain emergency powers, and a resolution is usually passed at the July meeting of local authorities empowering the respective chairmen and vice-chairmen of all standing committees to give such instructions as may be requisite with respect to any matter of an urgent nature, and to affix the seal of the council to such documents as may require to be sealed in relation to matters within the sphere of their respective committees during the vacation period (*l*). [634]

Contracts made by Committees.—What is the position of a council in respect of a contract which one of its committees has purported to make? Unless a power to enter into a contract has been delegated by the appointing council, any contract must be approved by them. The effect of such approval is that the contract then becomes a contract of the council (*m*).

The approval or ratification of an agreement must be under seal when an agreement, if originally made by the council, is required to be sealed (*n*).

In the Kidderminster case it was decided that after an offer made by a person to a committee had been withdrawn, the subsequent ratification under seal by the council was too late, and the contract could not be enforced.

(*k*) *Cook v. Ward* (1877), 2 C. P. D. 255, C. A.; 41 Digest 47, 346.

(*l*) As to the ratification by the council of action taken in pursuance of such authority and the relation back of such ratification to the time of the doing of the act, see *R. v. Chapman, Ex parte Artidge*, [1918] 2 K. B. 298; 87 L. J. (K. B.) 1142; 86 Digest 233, 729.

(*m*) *Laxford v. Billericay R.D.C.*, [1903] 1 K. B., at p. 780; 13 Digest 394, 1193.

(*n*) *Kidderminster (Mayor, etc., of) v. Hardwick* (1873), L. R. 9 Ex. 18; 18 Digest 890, 1163; *Bolton Partners v. Lambert* (1889), 41 Ch. D. 295; 1 Digest 420, 1146.

The decision in *Bolton Partners v. Lambert* (o), makes it somewhat doubtful whether when a bargain has been made by a person with a committee, that person may, in all cases, prior to the ratification of the bargain by the council withdraw from the bargain. The decision in this case is, however, the subject of adverse criticism (o). [635]

MEETINGS OF COMMITTEES

General Code.—The statutory provisions relating to meetings of committees of local authorities are contained in Part V. of the Third Schedule to the L.G.A., 1933 (oo).

They provide that the minutes of proceedings of a committee must be drawn up and entered in a book kept for that purpose. Such minutes must be signed at the same or next ensuing meeting of the committee, by the person presiding thereat, and any minute purporting to be so signed shall be received as evidence without further proof.

Until the contrary is proved, a meeting of a committee in respect of which a minute has been so made and signed is deemed to have been duly convened and held. The members present at the meeting are deemed to have been duly qualified, and the committee is to be deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes.

The proceedings of a committee are not to be invalidated by any vacancy among their members or by any defect in the election or qualification of any member of the committee.

It will, of course, be competent for any party seeking to upset the proceedings of a committee to tender evidence showing that a meeting of the committee was not duly convened, or that any of the members were not duly qualified, or that the committee was not duly constituted or was acting *ultra vires*. [636]

Agenda.—Standing Orders of local authorities usually provide that every committee shall be summoned by the town clerk or clerk by sending to every member of the committee an agenda paper so that the same may be delivered at the address of the member at least two clear days before the date of the meeting.

In the case of meetings of county councils, where members often live at considerable distances from the place where the meetings are held, a longer period of notice is required.

It is also usually provided in standing orders that except in matters of urgency (of which the chairman of the committee shall be the judge), no business is to be transacted at any meeting of the committee except that indicated by the agenda paper. In practice, however, agenda often conclude with the item "General Business," and considerable latitude is usually extended by the chairmen of committees to members desirous of bringing up matters for discussion under that head.

There is considerable variance in the manner in which the agenda of different local authorities are prepared. In some cases every matter to be considered is set out in detail; where it involves correspondence, such correspondence is epitomised; and where necessary the agenda paper is supplemented by detailed reports from the chief officers of the council. In other local authorities, however, the agenda paper is a mere outline, and the details of the matters to be discussed are not

(o) See Fry on Specific Performance, 4th ed., in note at p. 677.
(oo) 26 Statutes 500.

disclosed to the members of the committee until the meeting takes place. It is obvious that of the two methods, the former is to be preferred. Not only is it desirable that the members of the committee should have some time to consider the business prior to the committee meeting, but, in practice, much time is saved and many questions avoided by a full description on the agenda paper of the matters to be discussed. Moreover, a detailed agenda paper supplies an excellent basis for recording the minutes of the proceedings of the committee and facilitates the subsequent drafting of the minutes. [637]

Chairman and Vice-Chairman.—At the first meeting after appointment, each committee appoints from amongst its members, a chairman and vice-chairman for the ensuing year. The chairman so selected presides at every meeting of the committee at which he is present, and in his absence the vice-chairman, if present, presides. In the rare event of both chairman and vice-chairman being absent, the committee elects an acting chairman for the time being. [638]

Sect. 96 of the L.G.A., 1933 (p), allows a council who appoint a committee under any enactment to make, vary and revoke standing orders respecting the quorum, proceedings and place of meeting of the committee. Subject to any such standing orders, the quorum, proceedings and place of meeting are to be such as the committee may determine. Sub-sect. (2) of sect. 96 confers on the person presiding at a meeting of a committee appointed under any enactment a second or a casting vote. The phrase implies that a casting vote may be given, whether the chairman has or has not voted in the first instance. Standing orders usually provide that the chairman of a committee shall be *ex-officio* a member of every sub-committee appointed by the committee of which he is chairman. Provision is also frequently made that no member of the council shall be chairman at the same time of more than one standing committee.

On taking the chair, the chairman has *prima facie* authority to regulate and control the proceedings of the committee meeting. He is invested with power to preserve order, to decide whether motions are in order, and to exclude irrelevant motions and irrelevant discussions. He further has to decide points of order, to put recommendations to the meeting, to regulate discussion by calling upon persons to speak, and to declare the results of the voting on motions.

Standing orders usually govern the procedure at meetings, the moving of motions and amendments, the putting of questions, the passing of resolutions, and the conduct of members during debate. [639]

In many authorities, one member frequently remains chairman of a particular committee for a considerable number of years. He therefore acquires an intimate knowledge of the duties with the execution of which the particular committee is charged, and by his personal recommendations is often enabled to carry with him not only the other members of the committee, but the whole council.

Other authorities, however, hold the view that such long continuance in one particular office is undesirable, and accordingly provide in their standing orders that no member shall be elected chairman of the same standing committee for more than two or three or five consecutive years. [640]

Quorum.—The standing orders of the council also fix a quorum—*i.e.* the minimum number of persons necessary to transact business—for each committee. The quorum varies with different authorities and usually bears some relationship to the total membership of a committee. Where such total membership is in the neighbourhood of twelve the quorum may be fixed at three or four, where the total membership is twenty or thereabouts, the quorum may be five.

Standing orders usually contain a provision that if at the expiration of fifteen minutes after the hour for which a meeting of any committee is called, a quorum shall not be present, no meeting shall take place, and the committee shall stand adjourned. [641]

Reports to Council.—All acts done and all recommendations made by the committee are embodied in reports which are laid before the council at its next meeting after the date of the meeting of the committee. Here again, there is a great divergence in practice between one authority and another in the number of reports made by committees in the course of a year, and in the length and detail of such reports.

For example, a county council may receive reports from its committees only once a quarter; most other local authorities receive reports once a month. Again, reports of the committees of some authorities are set out in great detail and extend frequently to anything from 50 to 150 printed pages, whereas reports of other authorities give merely an outline of the acts and proceedings of their committees.

Reports of committees may be divided into two categories :

(1) They may report, for the information of the council, acts and proceedings of the committee since the last preceding meeting of the council. They do not ask for the approval of the council to such action where this is within the scope of the powers delegated by the council to them. When the report of the committee is under consideration at a meeting of the council, any member may put a question to the chairman of the committee, or, in his absence, to the member bringing up the report, provided that such question is upon a matter arising directly from the report. Moreover, the chairman of the committee or other person bringing up the report is usually invested by the standing orders with power, with the consent of the council, to withdraw or amend the report or any part of it.

(2) The second category is a recommendation of a committee that a certain course of action should be taken. This *does* require the approval of the council, and the chairman or other member bringing up the report moves *seriatim* that the recommendations in the report be adopted.

Each recommendation adopted by the council forthwith becomes a resolution of the council. In a report for information, the acts reported have usually been already performed and no effective interference can, therefore, be made by the council, but on a recommendation, any member may either move an amendment or move that the recommendation be referred back to the committee for reconsideration.

When a report of a committee has been adopted by a council, the acts of the committee become valid as from the time when they were done upon the ordinary principle of ratification by the principal of the acts of his agent (*q*). [642]

(*q*) *Firth v. Staines*, [1897] 2 Q. B. 70; 1 Digest 403, 1033; *Hussey v. Exeter Corp.* (1918), 87 L. J. (Ch.) 443; 25 Digest 133, 524. See also *R. v. Chapman, Ex parte Arlidge*, [1918] 2 K. B. 298; 36 Digest 233, 729.

Inspection of Documents.—A member of a local authority has a *prima facie* common law right to inspect and take copies of documents addressed to or by the council of which he is a member. It has been held, however, that where such documents relate to or bear upon impending litigation between a third party and the council, and it appears that the member of the council who desires inspection of the documents is actuated, not solely in the public interest, but rather in the interest of such third party, the court will in its discretion refuse to compel the council by *mandamus* to allow the member to inspect them (*r*).

Moreover, a councillor has no right to a "roving commission" to examine corp'n. documents out of mere curiosity. He has only the right to see for *bona fide* purposes documents connected with the council's work (*s*). [643]

Admission of Press to Committee Meetings.—The provisions of the Local Authorities (Admission of the Press to Meetings) Act, 1908 (*t*), do not apply to meetings of committees of any local authorities except in so far as such committees are themselves local authorities as defined in sect. 2 of that Act. That definition includes an Education Committee and Joint Education Committee established under sect. 4 of the Education Act, 1921 (*u*), so far as relates to any acts or proceedings which are not required to be submitted to the council or councils for approval.

The provisions of the 1908 Act do not, however, restrict or interfere with the power of any committee or council to admit either the Press or the public to committee meetings if they so desire. Having regard, however, to the confidential nature of much of the business which is transacted in committees, such a course is obviously disadvantageous, and few local authorities in practice admit either the Press or the public to meetings of their committees. [644]

RELATIONS OF COMMITTEE WITH PERMANENT OFFICIALS

The relations of committees with permanent officials of the council vary considerably according to the size of the council. In large authorities it is customary for each committee to have a separate committee clerk, and principal officers of the council only attend the committee when some item of considerable importance is to be discussed. Moreover, many large authorities hold their committee meetings in the afternoons so that it is possible for the chairman of a committee, if he desires the presence of one of the chief officials, to request his attendance, and the official may remain in attendance during a short period only and not during the whole meeting.

In smaller authorities, on the other hand, it is often the practice for one or several of the chief officials to attend all the meetings of

(*r*) *R. v. Hampstead Borough Council, Ex parte Woodward* (1917), 116 L. T. 218 81 J. P. 65; 13 Digest 302, 341.

(*s*) *R. v. Southwold Corp'n.* (1907), 71 J. P. 351; 13 Digest 303, 346. For a case in which the court declined to grant a *mandamus* where a ratepayer was refused inspection of the minutes of a burial authority which he desired to see, but not for his own purposes, see *R. v. Wimbledon U.D.C.* (1897), 62 J. P. 84; 13 Digest 349, 878. See also *Bank of Bombay v. Suleman Somji* (1908), 99 L. T. 62; 13 Digest 303, 348, as to when a member of a corp'n., not subject to the Companies Acts, may claim inspection of the corp'n.'s books; and *R. v. Bradford-on-Avon R.D.C.* (1908), 72 J. P. 348; 13 Digest 303, 354, as to the right of a parochial elector to see an opinion of counsel obtained by the district council with reference to a disputed right of way.

(*t*) 10 Statutes 844. This Act is not repealed or amended by the L.G.A., 1938.

(*u*) 7 Statutes 182.

committees. For example, a meeting of the Highways Committee will be attended by the town clerk and borough surveyor; a meeting of the Public Health Committee by the town clerk and M.O.H., and, where necessary, by the borough surveyor; a meeting of the Finance Committee by the town clerk and borough treasurer.

The work of committees is carried out in direct contact and consultation with the principal and assistant officers in each department. The departmental chief is the servant of the council and of the committee, and gives his technical advice, provides statistics and plans and reports, and answers questions and criticism. [645]

LONDON

L.C.C.—The voluminous duties and powers of the L.C.C. are delegated to some twenty-two committees, some of which are statutory, and others optional or for special purposes. To set out the work of these committees would require a volume in itself, seeing that the duties of the L.C.C. are derived from a large number of statutes which were operated by bodies to whom the L.C.C. have succeeded. One group of such powers and duties was transferred from the Metropolitan Board of Works. This group includes street improvements, fire brigade, housing, supervising the laying out of streets and the construction of buildings, and the provision and maintenance of parks. A second group includes the licensing of premises for stage plays, and (from the justices in quarter sessions) the licensing of premises for music or dancing; the provision of mental hospitals and reformatory and industrial schools, duties with regard to county bridges, the appointment, etc., of coroners, and the carrying out of statutory provisions relating to weights and measures. A third group consists of powers and duties mainly transferred from the London School Board, coupled with additional powers relating to education. A fourth group represents the powers and duties transferred from the Metropolitan Asylums Board under the L.G.A., 1929. A fifth includes powers and duties directly conferred by Parliament with regard to a number of matters, the chief of which relate to child protection, licences for employment agencies, massage establishments, motor cars and motor driving, the provision of ambulances, the maintenance of museums, the welfare of the blind, the care of the mentally defective, shop hours, town planning and health services.

The enactments governing the appointment of committees by the L.C.C. have recently been remodelled by Part IV. of the L.C.C. (General Powers) Act, 1934 (a), which closely resembles Part III. of the L.G.A., 1933 (b). Thus, the four main features of the code in the Act of 1933, as described on pp. 260, 261, *ante*, are all extended to the L.C.C. by the Act of 1934; see sects. 19, 25, 26 and 29.

In addition, the appointment and powers of the finance committee, consisting of members of the council only, will be governed by sect. 20 of the Act of 1934, which is based on sect. 86 of the L.G.A., 1933 (c). This section also requires that no costs, debt or liability exceeding £50 shall be incurred by the council, except on a resolution of the council passed on an estimate submitted by the finance committee, unless it is for the service of the standing joint committee (d). [646]

(a) 24 & 25 Geo. 5, c. xl.

(b) 26 Statutes 352.

(c) *Ibid.*, 353.

(d) S. 80 (3) of the L.G.A., 1888 (10 Statutes 751), is repealed as to London.

A mental hospitals committee will in future be appointed by the L.C.C. under sect. 22 of the Act of 1934, for the purposes of the Lunacy and Mental Treatment Acts, 1890 to 1930, and the Mental Deficiency Acts, 1913 to 1927 (*e*). All matters relating to the exercise by the council of their functions under these Acts stand referred to the mental hospitals committee.

A rearrangement of functions between the education committee of the L.C.C. and other committees of the council is provided for in sect. 21 of the Act, which allows educational matters relating also to a general service of the council to be transferred from the education committee to another committee, and any matter which is not required to stand referred to a committee of the council to be transferred from that committee to the education committee. [647]

The provisions in sect. 8 of the Midwives Act, 1902 (*f*), in sect. 2 (4) of the Blind Persons Act, 1920 (*g*), and sect. 4 of the P.H. (Tuberculosis) Act, 1921 (*h*), relating to the delegation to committees of functions under these Acts, are repealed as to London by the recent Act. These repeals follow from sect. 23 of that Act, which allows the L.C.C. to refer to any committee which the council are by statute required to appoint, other than the committee for hearing appeals appointed under sect. 212 of the Metropolis Management Act, 1855 (*i*), the old age pension committee, the education committee or the mental hospitals committee, any matter which the council think would be better regulated and managed by that committee, except any matter which is required to stand referred to another committee. [648]

By the proviso to sect. 25 of the Act a member of a committee, appointed from outside the council, need not be qualified as a county councillor.

A right to a second or a casting vote (*k*) is given to the person presiding at a meeting of a committee of the L.C.C. by sect. 29 (2) of the Act of 1934. [649]

The committees of the council, as revised in February, 1934, are as follows, those which are statutory being marked with an asterisk :

- *Building Act Committee.
- Central Public Health Committee.
- *Education Committee.
- *Entertainments (Licensing) Committee.
- Establishment Committee.
- *Finance Committee.
- *Fire Brigade and Main Drainage Committee.
- General Purposes Committee.
- Highways (formerly Improvements) Committee.
- Hospitals and Medical Services Committee.
- *Housing and Public Health Committee.
- Improvements Committee.
- Local Government Records and Museums Committee.
- *Mental Hospitals Committee.
- Parks and Open Spaces Committee.
- Parliamentary Committee.
- *Public Assistance Committee.

(*e*) 11 Statutes 17 *et seq.*

(*g*) 20 Statutes 594.

(*i*) 11 Statutes 938.

(*k*) See *ante*, p. 276, as to the meaning of this phrase.

(*f*) *Ibid.*, 732.

(*h*) 13 Statutes 972.

Public Control Committee.
 Staff (Appeals) Committee.
 Supplies Committee.
 *Theatres and Music Halls Committee.
 Town Planning Committee.
 Welfare of the Blind Committee.

As respects joint committees, see *post*, p. 282.

Metropolitan Borough Councils.—The enactments as to the appointment by these councils of committees have also been remodelled by Part IV. of the L.C.C. (General Powers) Act, 1934 (*l*), and the four main features of the code in the L.G.A., 1933, as described on pp. 260, 261, *ante*, are also extended to committees of metropolitan borough councils. But a departure has been made as to the service on committees of persons who are not members of the borough council. By sect. 27 a committee appointed under that section must consist of members of the borough council, unless it is a public library committee, or a committee appointed for any of the purposes of the Housing Acts, 1925 and 1930 (*m*). There is no restriction on the number of outside persons who may serve on a public library committee (*n*), but a majority of a housing committee must be members of the borough council (sect. 27 (1) (b)). [650]

A committee appointed for any of the purposes of the P.H. (London) Act, 1891, may (subject to the terms of the appointment) serve and receive notices, take proceedings, and empower any officer of the borough council to make complaints and take proceedings on behalf of the committee and otherwise to execute the Act of 1891 (sect. 27 (5)).

The provision in sect. 20 of the Act of 1934, as to the finance committee of the L.C.C., is applied to the borough councils, with adaptations, by sect. 28 of the Act. A finance committee must consist of members of the borough council.

Sect. 23 of the Act, as to the reference to certain of the statutory committees of matters which the council think would be better regulated and managed by that committee, is applied to borough councils by sect. 28 (2) of the Act, but an assessment committee is not to be entrusted under the section with additional functions.

By sect. 28 (3) of the Act a committee are prohibited from spending money beyond such sum as may be allowed by the borough council, and by sect. 28 (4) the provisions as to disqualification for membership of committees and for acting where a pecuniary interest exists, are applied to committees of borough councils. [651]

Standing orders as to the matters to be referred and the functions to be delegated by a borough council to any committee pursuant to Part IV. of the Act of 1934, and the place of meeting, quorum and proceedings of any committee, other than assessment committee, may be made by the borough council under sect. 30 of the Act. Sub-sect. (3) of this section also gives to a person presiding at a meeting of a committee of a borough council a second or a casting vote (*o*). [652]

A new power of defraying the travelling expenses of members of committees or sub-committees, incurred by a borough council in

(*l*) 24 & 25 Geo. 5, c. xl.

(*m*) 13 Statutes 1001; 23 Statutes 396.

(*n*) S. 8 (1) of the London Government Act, 1899 (11 Statutes 1230), as to the constitution of library committees, is repealed by the Act of 1934.

(*o*) See *ante*, p. 276, as to the meaning of this phrase.

defraying the reasonable expenses of conveying them for the purpose of inspections which are necessary for the discharge of functions of the council, or of any committee or sub-committee of the council, is conferred on metropolitan borough councils by sect. 62 of the Act of 1934. The expenses must not exceed the cost of conveying the members from the town hall of the borough to the place visited and to the town hall from the place visited. The section also extends to joint committees and joint boards, appointed by a borough council jointly with any other borough council or local authority.

Each metropolitan borough council appoints an assessment committee pursuant to sect. 18 (h) of the L.G.A., 1929 (*p*), consisting of members of the council to whom is added one person appointed by the L.C.C.

The committees of a typical metropolitan borough council are :

- Assessment.
- Baths and Washhouses.
- Finance (L.G.A., 1899, ss. 8, 9).
- General Purposes.
- Highways.
- Housing.
- Law and Parliamentary.
- Maternity and Child Welfare.
- Public Health.
- Public Libraries.
- Traffic and Public Lighting.
- Valuation.
- Works and Dwellings.
- Buildings Special Committees.
- Charity Committees. [653]

Joint Committees.—Sect. 91 of the L.G.A., 1933 (*q*), in Part III. of that Act, allows local authorities to appoint joint committees of those authorities for any purpose in which they are jointly interested. See title **JOINT BOARDS AND COMMITTEES**.

By sect. 97 of the L.G.A., 1933 (*r*), the provisions of Part III. of that Act relating to joint committees apply to the L.C.C. and to any metropolitan borough council as if that council were for the purposes of those provisions a local authority within the meaning of the Act, subject to the following modifications :

- (a) a reference to disqualification under Part II. of the Act is to be construed as a reference to disqualification under the provisions of any enactment for the time being in force relating to disqualification for membership of the council in question ; and
- (b) any dispute as to the proportion in which the expenses of a joint committee of which one or more of the constituent authorities is a metropolitan borough council shall be defrayed is to be determined by the Minister.

Sect. 97 also, therefore, extends to joint committees of London authorities the provisions in sect. 95 as to disability for voting on account of interest in contracts. [654]

TABLE OF COMPULSORY STATUTORY COMMITTEES

Authority.	Committee.	Act.	Constitution.	Nature of Powers.	Remarks.
County Councils	Finance Committee	L.G.A., 1933, sect. 86 (a)	Must consist of members of the county council	Regulation and control of the finance of the county	Unless otherwise provided by an enactment, no costs, debt or liability exceeding £50 shall be incurred by council except on an estimate submitted by this committee and passed by council. The council must provide for payments by the standing joint committee.
	Public Assistance Committee	L.G.A., 1929, sect. 6 (b)	Constituted under a scheme prepared by the council, which may allow persons who are not members to serve, but some of them must be women. Of the total number of members, two-thirds at least must be members of the council	Acts in an advisory capacity only, unless the powers of the council under the Act have been delegated to it. (See sect. 4 (3) of the Poor Law Act, 1930)	Any other committee of the council or the members of a committee may act as the Public Assistance Committee, if the scheme so provides.
	Guardians Committee	L.G.A., 1929, sect. 7 (b)	Must not exceed 36 members or be less than 12. Consists of members of the councils of the boroughs or districts in the area, members of the county council representing the area, and outside persons appointed by the county council, women as well as men, up to a maximum of one-third of the total	Discharge of functions set out in sect. 5 (3) of the Poor Law Act, 1930	Scheme of county council should provide for effective consultation between this and the Public Assistance Committee (of which this committee is a local sub-committee) and for the presence of a representative of the former at meetings of the latter when business concerning the area of the former is being discussed.

(a) 26 Statutes 353.

(b) 10 Statutes 886, 887, now replaced by ss. 4, 5 of the Poor Law Act, 1930; 12 Statutes 971.

Authority.	Committee.	Act.	Constitution.	Nature of Powers.	Remarks.
County Councils (<i>contd.</i>)	Education Committee	Education Act, 1921, sect. 4 and First Schedule (<i>c</i>)	Majority of members must be appointed by county councils from their members unless county councils direct otherwise. Women must be included, and persons with special knowledge of education, appointed by special bodies in the district	Powers of the county council under the Education and Public Libraries Acts may be delegated or stand referred to this committee. The council may co-operate with other districts	Sub-committees may be appointed, consisting wholly or partly of members of the committee. The committee is constituted in accordance with a scheme prepared by the council and approved by the Board of Education.
	County Valuation Committee	R. & V.A., 1925, sect. 18 (<i>d</i>)	Any number of members may be appointed by the county council and there must be at least one representative from each assessment committee in the county	To promote uniformity in the principles and practice of valuation, and to assist rating authorities	Central Valuation Committee has suggested that these committees should appoint a professional valuer, to be called the county valuer, who should be at the disposal of rating authorities.
	Small Holdings and Allotments Committee (see County Agricultural Committee)	Small Holdings and Allotments Act, 1908, sect. 50 (<i>e</i>)	—	—	Superseded by the small holdings and allotments sub-committee of the county agricultural committee, see s. 8 (2) of the M. of A. & F. Act, 1919 (<i>f</i>).
	Diseases of Animals Committee (see County Agricultural Committee)	Diseases of Animals Act, 1894, Sched. 4 (<i>g</i>)	—	—	Superseded by the diseases of animals sub-committee of the county agricultural committee, see s. 8 (2) of the M. of A. & F. Act, 1919 (<i>f</i>).
	Mental Deficiency Committee for the care of the mentally defective	Mental Deficiency Act, 1913, sects. 28, 66, and Mental Treatment Act, 1930, sects. 7, 22 (<i>h</i>)	Partly of members of the council and partly of persons having knowledge and experience of defectives, of whom some must be women. Of the whole committee, a majority must be members of the council. A co-opted member of the committee may have financial dealings with the council	All powers and duties of the council under the Act stand referred to this committee, unless the council consider a matter to be urgent, and powers may be delegated to the committee	Visiting Committee may be directed by county council to act as the council for the mentally defective, or under sect. 66, the M. of H. may direct the latter committee to act as the visiting committee.

(*c*) 7 Statutes 132, 217.
(*g*) 1 Statutes 423.

(*d*) 14 Statutes 642.
(*h*) 11 Statutes 176, 193 ; 23 Statutes 163, 173.

(*e*) 1 Statutes 273.
(*f*) 3 Statutes 454.

County Councils (contd.)	Visiting Committee	County Councils (contd.)	Not less than 7 members. Two members at least must be women. Not more than one-third need be members of county council. Where there is more than one hospital a sub-committee must be constituted for each	Provision and management of mental hospitals	The county council may direct the visiting committee to act as the committee for the mentally defective, or under sect. 66 of the Mental Deficiency Act, 1913 (j), the M. of H. may direct the latter committee to act as the visiting committee. Council receives the report of this committee on all matters of public health and housing, except in cases of urgency, before deciding to act.
	Public Health and Housing Com- mittee	Housing, Town Planning, etc., Act, 1909, sect. 71; Housing Act, 1925, sect. 111 (2); L.G.A., 1929, sect. 14 (3) (k)	Two-thirds at least must be members of the council	Matters relating to the exercise and performance by the council of their powers and duties as respects public health and the housing of the working classes may stand referred to this committee. All powers of the council relating to such matters may be delegated to this committee except raising a rate or borrowing money	This committee is only formed when a hospital district has been constituted as provided in sect. 8. Where a hospital district is mainly within one borough or district, the county council may invest the council with the powers of the committee.
	Hospital Committee	Isolation Hos- pitals Act, 1898, sect. 10 (l)	May consist wholly, partly or not at all of representatives of the county council. Where no contribution is made by the county council to the funds of the hospital members usually consist only of representatives of boroughs or districts	Has power to acquire land, is a body corporate with a common seal and may provide a hospital by purchase or otherwise, and may manage and maintain same if county council delegate such powers. County councils must retain the power to inspect any hospital	This county committee has no jurisdiction in a borough or urban district with a separate pension committee. An appeal lies to the M. of H. from committee's decision.
	Local Pension Committee	Old Age Pensions Act, 1908, sect. 8 (m)	May consist wholly or partly of members of the council, or need not have any members of the council	Deciding the authorisation of old age pensions. The committee may appoint such and so many sub-committees as it considers necessary, consisting wholly or partly of members of the committee, and may delegate any of its powers to them	

(i) 23 Statutes 163.

(j) 11 Statutes 193.

(k) 10 Statutes 848, 891; 13 Statutes 1063.

(l) 13 Statutes 864.

(m) 20 Statutes 583.

Authority.	Committee.	Act.	Constitution.	Nature of Powers.	Remarks.
County Councils (<i>contd.</i>)	Standing Joint Committee	L.G.A., 1888, sect. 30 (<i>n</i>)	Such equal number of justices and members of the council as may be agreed between quarter sessions and the county council, or in default of agreement, such number as a Secretary of State may determine	For the purpose of the police, clerks of the justices, and joint officers, and of matters required to be determined jointly between quarter sessions and the county council	All such expenditure of the Standing Joint Committee as the committee determine must be paid out of the county fund, and provision must be made for such payments. Proceedings are not submitted to the county council. This committee must appoint two sub-committees, viz. a Small Holdings and Allotments sub-committee and a Diseases of Animals sub-committee, which act as the committees of that name set up under the Acts of 1908 and 1894 respectively. The former must include one or more members representing tenants of small holdings and allotments. These sub-committees need not conform with the provisions of the Act of 1919 in their constitution.
	County Agricultural Committee	M. of A. & F. Act, 1919, sect. 7 (<i>o</i>)	Constituted in accordance with scheme approved by M. of A. & F. Minister may appoint not more than one-third members. There must be women and some persons with knowledge of agriculture or interest in agricultural land. A majority of members must be appointed by county councils from their members unless county councils otherwise direct	May exercise powers under Destructive Insects and Pests Acts, 1877—1907; Diseases of Animals Acts, 1894—1914; Fertilisers and Feeding Stuffs Act, 1906; Land Drainage Act, 1930; and Small Holdings and Allotments Act, 1908; and other matters relating to agriculture. Makes inquiries with a view to formulating schemes for development of rural industries and social life in rural districts	Maternity and child welfare work is permissive, but if work is undertaken the committee must be set up. If established, the committee may be either an existing committee or sub-committee of an existing committee. [655]
	Maternity and Child Welfare Committee	Maternity and Child Welfare Act, 1918, sect. 2 (1) (<i>p</i>)	Two-thirds of members must be members of council. Other one-third may be persons with special knowledge. Committee must include at least 2 women. Sub-committees may be appointed	All powers of council as to maternity and child welfare may be delegated to the committee except raising rates or borrowing money	

(p) 11 Statutes 743.

(o) 3 Statutes 453.

(n) 10 Statutes 708.

County Borough Councils	Watch Committee	Municipal Corporations Act, 1882, sect. 190 (g)	Consists of the mayor, as <i>ex officio</i> members, and such other members of the council, not exceeding one-third of their total number, as the council may appoint	Appointment, control and management of police force; its regulation and efficiency. Proceedings of this committee do not require confirmation by the council, except for payments authorised under Sched. 5 to the Act	Committee is only appointed where the borough has a separate police force and cannot be overruled by the council.
	Education Committee	Education Act, 1921, sect. 4, and First Schedule (r)	Majority of members must be chosen from the council. Others may be co-opted. Women must be included in the membership, and also persons with special knowledge of education	All powers of the council under the Education and Public Libraries Act may be delegated to this committee, except raising rate or borrowing money, or stand referred to it. The council may co-operate with other districts	Sub-committee may be appointed, consisting wholly or partly of members of the committee. The committee is constituted in accordance with a scheme prepared by the council and approved by the Board of Education.
	Committee for care of the mentally defective	Mental Deficiency Act, 1913, sects. 28, 66, and Mental Treatment Act, 1930, sects. 7, 22 (s)	As in committees of county councils	As in committees of county councils	See under committees of county councils.
	Visiting Committee	Mental Treatment Act, 1930, sect. 7 (t)	Not less than 7 members. Two members at least must be women. Not more than one-third need be members of county borough council. Where there is more than one hospital, sub-committees must be formed for each and be appointed annually	Provision and management of mental hospitals	If the county borough has contributed to the county hospital, it may appoint members to county committee. This committee of the county borough, with the addition of two women, may be the same as that for the cure of the mentally defective.

(g) 10 Statutes 636.

(r) 7 Statutes 132, 217.

(t) 23 Statutes 163.

(s) 11 Statutes 176, 193; 23 Statutes 163, 173.

Authority.	Committee.	Act.	Constitution.	Nature of Powers.	Remarks.
County Borough Councils (<i>contd.</i>)	Assessment Committee	R. & V.A., 1925, sect. 17 (<i>a</i>)	Not less than one-third of members must be persons who are not members of council, and if a member not being a member of council becomes a member thereof, his term of office on the committee thereupon expires. Member of committee to which duties in respect of preparation of valuation list have been delegated is disqualified for appointment As in Public Assistance Committee of a county council, <i>supra</i>	Exercises such powers and duties as are conferred upon it by the R. & V. A., 1925	The council only appoints this committee if the county borough has been constituted an assessment area. An assessment area may be formed by scheme consisting of a county borough and part of a county. This course was adopted in Lancashire.
	Public Assistance Committee	L.G.A., 1929, sect. 6 (<i>a</i>)			Scheme may provide for sub-committees (Poor Law Act, 1930, sect. 6). These must have a majority of members of the council, and must include women.
	Local Pension Committee	Old Age Pensions Act, 1908, sect. 8 (<i>b</i>)	May consist wholly or partly of members of the council, or need not have any members of the council	Decides the authorisation of old age pensions. May appoint such and so many sub-committees as it deems necessary	An appeal lies to Minister of Health from a decision of this committee.
	Maternity and Child Welfare Committee	Maternity and Child Welfare Act, 1918, sect. 2 (<i>c</i>)	At least two-thirds must be members of council. The remainder may consist of persons with special knowledge. The committee must include at least 2 women. Sub-committees may be appointed	All the powers of council as to maternity and child welfare, except of levying a rate or borrowing money may be delegated to the committee	This kind of work need not be undertaken at all, but if it is the committee must be set up. If established, the committee may be either an existing committee or a sub-committee of an existing committee.

(n) 14 Statutes 641.

(a) 10 Statutes 886.

(b) 20 Statutes 583.

(c) 11 Statutes 743.

County Borough Councils (<i>contd.</i>)	Small Holdings Committee	Small Holdings and Allotments Act, 1908, sect. 50 (4) (<i>d</i>)	May consist wholly or partly of members of council, so long as they are in a majority	All powers under Part III. of the Act may be delegated by the council except of raising a rate or borrowing money and powers of allotments managers under Part II. may be exercised by it	Under sect. 14 (4) of the Allotments Act, 1922 (<i>e</i>), this committee may be appointed as the allotments committee. As to that committee, see BOROUGH COUNCILS, <i>post</i> . [656]
	Diseases of Animals mittee	Diseases of Animals Act, 1894, Sched. 4 (<i>f</i>)	Wholly or partly members of the council, co-opted members being rated occupiers in the district	Powers and duties of the council under the Act may be delegated to this committee. May appoint one or more sub-committees	The council has considerable powers over this committee, as it can alter the number of members at will, dissolve it or put another in its place.
Borough Councils	Watch mittee	Municipal Corporations Act, 1882, sect. 190 (<i>g</i>)	Number of committee must not exceed one-third number of members of council, plus the mayor. Mayor must be a member.	Control and regulation of police force. Acts of committee need not be submitted to council, though police payments can only be made on order of council	This committee need only be appointed when the borough maintains its own police force.
	Education Committee	Education Act, 1921, sect. 4 and First Schedule (<i>h</i>)	As in Education Committee of county borough council, <i>ante</i>	—	Appointment optional if council have powers as to higher education only.
	Visiting mittee	Mental Treatment Act, 1930, sect. 7 (<i>i</i>)	Consists of not less than 7 members, the number being that fixed by the agreement under which an asylum is provided. Where there is more than one hospital, a sub-committee must be set up for each	Where a borough contributes to the county hospital, it may appoint two members to be members of the county committee	Only the boroughs mentioned in the Fourth Schedule to the Lunacy Act, 1890, are compelled to set up committees.
	Assessment Committee	R. & V.A., 1925, sect. 17 (<i>j</i>)	Constituted in accordance with scheme of county council approved by M. of H.	To supervise the valuation of property within the assessment area, and to hear objections against the valuations of the rating authority on the committee.	An assessment area may comprise more than one borough or urban or rural district, in which case each area has proportionate representation on the committee.

(*d*) 1 Statutes 274. (*e*) 1 Statutes 312. (*f*) 1 Statutes 428. (*g*) 10 Statutes 636. (*h*) 7 Statutes 132, 217. (*i*) 23 Statutes 163. (*j*) 14 Statutes 641.

Authority.	Committee.	Act.	Constitution.	Nature of Powers.	Remarks.
Borough Councils (<i>contd.</i>)	Diseases of Animals Committee	Diseases of Animals Act, 1894, sect. 31, Sched. 4 (<i>k</i>)	May consist wholly of members of council, or in part of such members and of rated occupiers otherwise qualified	All or any of the powers of the council under the Act except power to make a rate may be delegated or stand referred to the committee	This duty is only placed on those boroughs which in 1881 had a population of more than 10,000.
	Local Pension Committee	Old Age Pensions Act, 1908, sect. 8 (<i>l</i>)	May consist wholly or partly of members of council or need not have any members of the council	Authorises the payment of old age pensions. The committee may appoint such, and so may sub-committees, as it deems desirable	Only boroughs whose population exceeds 20,000 may set up this committee. An appeal from its decisions lies to the Minister of Health.
	Maternity and Child Welfare Committee	Maternity and Child Welfare Act, 1918, sect. 2 (1) (<i>m</i>)	Must consist of at least two-thirds of members of the council, the rest to be made up of persons having special knowledge, and at least 2 women. Sub-committees may be appointed	May exercise all the powers of the council under this and similar Acts if such powers are delegated to it	Only such boroughs as undertake maternity and child welfare work need set up this committee. If established, the committee may be either an existing committee or sub-committee of an existing committee.
	Allotments Committee	Allotments Acts, 1922, sect. 14, and 1925, sect. 12 (<i>n</i>)	May be an existing committee of the council or a sub-committee of such a committee and may consist wholly or partly of members of the council, but the latter must form a majority, and if a special committee set up, one-third should be persons experienced in allotments and not members of the council	All matters regarding the provision of allotment gardens stand referred to the committee and a report must be received on such matters from this committee before council may act, except in cases of urgency	Incumbent on council of borough having population of over 10,000 or over 400 allotments. The M. of A. may exempt the council from this duty. [657]

(*k*) 1 Statutes 406, 423.(*l*) 20 Statutes 583.
(*n*) 1 Statutes 312, 321.(*m*) 11 Statutes 743.

Urban District Councils	Education Committee	Education Act, 1921, sect. 4, and First Sched. (o) Old Age Pensions Act, 1908, sect. 8 (p)	As in Education Committee of county borough council, ante May consist wholly, partly or not at all of members of the council	—	Appointment optional if council have powers as to higher education only. Only urban districts with a population exceeding 20,000 may set up this committee. Appeal against decisions lies to M. of H.
	Allotments Committee	Allotments Acts, 1922, sect. 14, and 1925, sect. 12 (q).	As in Allotments Committee of borough council, <i>supra</i>	—	
	Maternity and Child Welfare Committee	Maternity and Child Welfare Act, 1918, sect. 2 (1) (r)	Two-thirds of members must be members of the council. Rest may be persons with special knowledge, and there must be at least 2 women. Sub-committees may be appointed	Council may delegate all its powers under this head to the committee except raising rates or borrowing money	Maternity and child welfare work is permissive, but if it is undertaken this committee must be constituted. It may be either an existing committee or sub-committee.
	Assessment Committee	R. & V.A., 1925, sect. 17 (s)	Constituted in accordance with scheme of county council approved by M. of H.	To supervise the valuation of property within the assessment area, and to hear objections of ratepayers as to their assessment	An assessment area may comprise more than one borough or district in which case each area has proportionate representation on the committee [658]
Rural District Councils	Maternity and Child Welfare Committee	Maternity and Child Welfare Act, 1918, sect. 2 (1) (t)	Two-thirds of members must be members of the council. Rest may be persons with special knowledge, and there must be at least 2 women. Sub-committees may be appointed	Council may delegate all its powers under this head to the committee except raising rates or borrowing money	Maternity and child welfare work is permissive, but if it is undertaken this committee must be constituted. It may be either an existing committee or sub-committee.
	Assessment Committee	R. & V.A., 1925, sect. 17 (u)	As in committee of U.D.C., <i>supra</i>	See U.D.C., <i>supra</i>	See U.D.C., <i>supra</i> . [659]

(o) 7 Statutes 132, 217.
(s) 14 Statutes 641.

(p) 20 Statutes 589.

(q) 11 Statutes 743.

(r) 11 Statutes 743.

(u) 14 Statutes 641.

NOTE.—The power conferred on town planning authorities by s. 48 of the Town and Country Planning Act, 1932, is permissive, and not obligatory.

COMMON COUNCIL

See CITY OF LONDON.

COMMON LAW CORPORATIONS

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See also titles :

ACTIONS BY AND AGAINST LOCAL	CREATION OF CITIES ;
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CHARTERS OF INCORPORATION ;	EMPLOYEES, RESPONSIBILITY FOR ACTS
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COUNTY BOROUGH ;	MUNICIPAL CORPORATION ;
COUNTY BOROUGH, CREATION OF ;	ROYAL BOROUGHS ;
COUNTY OF A CITY OR TOWN ;	SUMMARY PROCEEDINGS ;
COUNTY REVIEW ;	ULTRA VIRES.

INTRODUCTORY

Only the characteristics, and not the powers, duties and liabilities of common law corpsns., or their government are dealt with under this title. For such powers, etc., see specific headings, and titles BYE-LAWS ; CONTRACTS ; CORPORATE LAND ; CRIMINAL LIABILITY OF LOCAL AUTHORITIES ; EMPLOYEES, RESPONSIBILITY FOR ACTS OF ; MORTMAIN ; MUNICIPAL CORPORATION ; and ULTRA VIRES. [660]

DEFINITION

A corpn. at common law consists of a body of persons distinct from the individual members thereof, with a corporate name and perpetual succession, and with the capacities of suing and being sued as such and of acting within the limits laid down either on its creation, or subsequently, or by the policy of the law, as a separate person.

Wherever a body is created as a *corp.*, it *ipso facto* acquires all the characteristics and incidents, and the powers, duties and liabilities of a common law *corp.* so far as these are not varied or excluded by the instrument of creation or by statute. The *corp.* of a borough derives its incorporation from its charter; all other local authorities from statute. The former, however, acts by a council (*a*), which is not incorporated, but which exercises all the functions of the municipal *corp.* and is a local authority (*b*). It appears, however, that notwithstanding sect. 17 of L.G.A., 1933, a municipal *corp.* may still have some of the powers of a common law *corp.*, but not so as to be able to apply the borough fund otherwise than through the council (*c*). [661]

CLASSIFICATION

The usual classification of common law *corps.* is as *corps.* aggregate and *corps.* sole.

A *corp.* aggregate may consist of a number of members whose rights and duties with respect to the *corp.* are equal to each other, or it may be a body with a head whose existence is vital to the whole. In mediæval theory only the latter could exist. An instance of it is the mayor and *corp.* of a borough where the existence of the mayor is vital to the existence of the *corp.* (*d*), as compared with a county council (which is an example of the former class) where the chairman, however important in the operations of the council, is in no way essential to its existence (*e*).

A *corp.* sole exists where the characteristics of a *corp.* are vested in a single individual by virtue of some function or office. The most notable instance is the Crown (*f*), and, by statute, a number of Ministers have been constituted *corps.* sole for certain purposes (*g*). Bishops and parsons having cure of souls in a parish are *corps.* sole (*h*). Although the separation of the natural from the politic capacity of the *corp.* sole is complete, the dual personality perforce continues, and a conveyance to him of property may be in either capacity (*i*); before the Law of Property Act, 1925, the use of the word "successors" was strong evidence to show that the corporate capacity was intended (*k*).

Corps. are also classified as ecclesiastical, lay and eleemosynary (*l*). Ecclesiastical *corps.* may be either aggregate, *e.g.* the dean and chapter of a cathedral church, or sole, *e.g.* a bishop. Lay *corps.* are divided

(a) L.G.A., 1933, s. 17; 26 Statutes 313.

(b) *Ibid.*, s. 305; *ibid.*, 465.

(c) *A.-G. v. Manchester Corp.*, [1906] 1 Ch. 643; 13 Digest 362, 972.

(d) *Banbury Corp. Case* (1716), 10 Mod. Rep. 346; 13 Digest 435, 1580.

(e) L.G.A., 1933, s. 2 (2); 26 Statutes 307.

(f) Co. Litt. 15b, n. 4.

(g) Treasury Solicitor Act, 1870, s. 1; 3 Statutes 395; Public Trustee Act, 1906, s. 1 (2); 20 Statutes 79; Post Office Act, 1908, s. 45; 13 Statutes 55; M. of H. Act, 1919, s. 7 (3); 3 Statutes 420; M. of T. Act, 1919, s. 26 (3); 3 Statutes 439; M. of A. & F. Act, 1919, s. 1 (3); 3 Statutes 451.

(h) 1 Bl. Com. 469.

(i) *Fulmerston v. Steward* (1554), 1 Plowd. 101; 13 Digest 270, 2.

(k) Co. Litt. 9b. By virtue of the Law of Property Act, 1925, s. 60 (2), (4) (15 Statutes 287, 238), the use of the word "successors" was rendered unnecessary in conveyances to *corps.*, and a conveyance of freehold and probably of leasehold land (*ibid.*, s. 180 (1); 15 Statutes 360) to a *corp.* sole by his corporate designation without the word "successors," passes the whole interest of the grantor in the absence of a contrary intention; but see the doubts expressed as to this, in the case of leaseholds, in Halsbury (Hailsham ed.), Vol. 8, p. 87, note (s).

(l) 1 Bl. Com. 471.

into trading and non-trading corps. Eleemosynary corps. are almost exclusively charitable. [662]

CHARACTERISTICS

1. **The Name.**—There must be a corporate name, which must either be expressed in the instrument of formation, or implied from the corp'n.'s nature (*m*). There may be different names for different purposes (*n*), and formerly there could be different names either by prescription, or by prescription and by grant, but not by grant alone, since the subsequent grant would extinguish the former prescriptive name; but a modern corp'n. cannot acquire by prescription a different name from that by which it was incorporated (*o*). The name may be changed either by Royal Charter or by Act of Parliament.

A corp'n. aggregate acts in the corporate name; a corp'n. sole in his baptismal name (*p*).

Misdescription or mis-statement of the corporate name will not render a grant either by or to the corp'n. bad, if the name given is sufficiently descriptive to enable the corp'n. to be identified (*q*); but not if the corp'n. does not in fact exist (*r*). [663]

2. **Perpetual Succession.**—The corp'n. being entirely separate from its members, all its property, rights and liabilities continue until dissolution unaffected by the deaths or alteration of its membership. See titles CORPORATE LAND; MORTMAIN. [664]

3. **Common Seal.**—The power to possess and use a seal is an incident of a corp'n., and in general a corp'n. aggregate can only act or express its will under the common seal, which is the only authentic evidence of what it has done or agreed to do (*s*).

The common law rule was that a corp'n. aggregate could do no act at all but by deed under the common seal, with the exception of certain small actions of everyday occurrence and trifling importance, which did not vest or divest any interest, and which might be justified without showing any authority therefor (*t*). The principle of this rule and of these exceptions continue, though the former has been narrowed down and the latter extended. The rule was rigid down to the beginning of the nineteenth century, the only corps. aggregate who could act

(*m*) The names of all local authorities are prescribed by L.G.A., 1933; except in boroughs the name is the description of the type of the authority with the addition of the name of the administrative area, *ibid.*, ss. 2 (2), 31 (2), 32 (2) and 48 (2); in boroughs the names are prescribed by *ibid.*, s. 17 (1).

(*n*) *College of Physicians v. Butler* (1632), W. Jo. 261; 13 Digest 279, 99.

(*o*) *R. v. Haughley (Inhabitants)* (1833), 1 Nev. & M. (K. B.) 525; 13 Digest 280, 105.

(*p*) *Newton v. Travers* (1696), 3 Salkeld 108; 13 Digest 280, 108. The mediæval theory of this is interesting. The soul, having been baptised, is immortal and continues after the death of the body. The souls of all departed holders of the office are merged in one general communion of all souls. Therefore the demise of the body of any individual holder of the office is an immaterial event in the continuance of the corp'n., which is identified by means of the baptismal name with the immortal soul. Probably this does not apply to corps. sole created by statute, *e.g.* the Minister of Transport, because in such cases the element of continuity is supplied by other means, namely, the permanence of the office.

(*q*) *Ayrar's (Dr.) Case* (1614), 11 Co. Rep. 18b; 13 Digest 282, 146; *Croydon Hospital v. Farley* (1816), 6 Taunt. 467; 13 Digest 283, 149.

(*r*) *Doe d. Malden Corp'n. v. Miller* (1818), 1 B. & Ald. 699; 13 Digest 282, 145.

(*s*) *Ludlow Corp'n. v. Charlton* (1840), 6 M. & W. 815, *per* ROLFE, B., at p. 823; 13 Digest 285, 170.

(*t*) Comyns Dig. Franchise F. 1—14.

at all except under the common seal being those who had acquired special powers to do so, *e.g.* boroughs in their charters, chartered companies, and bodies specially incorporated by Act of Parliament.

In most municipal charters, however, the corp'n. was authorised to arrive at a decision of the common mind by a resolution passed by the majority at one meeting and confirmed at another, the principle being *ubi maxima pars ibi tota*, and for purposes within the charter the corp'n. might act in this way. From being a privilege specially conferred by charter or statute, this procedure was extended to all vestries (*u*), municipal corpns. (*a*), companies (*b*), urban and rural district councils (*c*), parish councils (*d*), county councils (*e*), and other bodies, and these corpns. each act for purposes within their statutory powers in this manner. This procedure, however, only applies to acts of the corp'n. *inter se* and not *inter alios*, and the old rule of necessity for the common seal continues to apply to contracts entered into by a corp'n. aggregate with certain exceptions. Therefore, in the absence of a seal, the corp'n. cannot be sued on its resolution (*f*), nor on a contract signed even by the majority of the corporators (*g*). But if the effect of the resolution is to confer an inchoate right on any person, which only requires the common seal to be complete, the affixing of the seal can be compelled by *mandamus* (*h*).

Among cases where it has been held essential to the enforcement of a contract against a corp'n. that it must be entered into under the common seal are the appointment of a solicitor (*i*), or of an architect (*k*), an increase in the salary of a town clerk (*l*), and the retainer of a solicitor to oppose a Bill in Parliament (*m*). In general, if a corp'n. appoints an agent to act on its behalf the appointment must be under the common seal, whether the appointment is for general purposes or a specific one, *e.g.* to seize for forfeiture or enter for condition broken (*n*), though not, apparently, to distrain (*o*). By statute powers are conferred on certain corpns. to appoint agents for particular purposes by resolution without the common seal; for example, where the corp'n. is a member of a company, it may appoint a representative to attend meetings of the company or its creditors and to exercise on its behalf all powers which the

(*u*) Vestries Act, 1818, s. 2; 6 Statutes 105.

(*a*) S. 69 of Municipal Corpns. Act, 1835 (5 & 6 Will. 4, c. 76), now repealed.

(*b*) Companies Clauses Consolidation Act, 1845, s. 98; 2 Statutes 676.

(*c*) P.H.A., 1875, Sched. I., r. 7; 13 Statutes 766.

(*d*) L.G.A., 1894, s. 3 (10) and First Schedule; 10 Statutes 776, 827.

(*e*) L.G.A., 1888, s. 75; 10 Statutes 746.

(*f*) *Dunston v. Imperial Gas Light and Coke Co.* (1831), 1 L. J. (K.B.) 49; 10 Digest 1149, 8127; *R. v. Stamford Corpn.* (1844), 6 Q. B. 433; 13 Digest 381, 1108.

(*g*) *Carter v. Ely (Dean)* (1834), 4 L. J. (Ch.) 132; 13 Digest 379, 1095.

(*h*) *R. v. Kendall* (1841), 1 Q. B. 366, *per* Lord DENMAN, C.J., at p. 385; 13 Digest 288, 192.

(*i*) *Arnold v. Poole Corpn.* (1842), 4 Man. & Gr. 860; 13 Digest 383, 1116. But it will be presumed, until the contrary is shown, that he was so retained (*Thames Haven Dock and Rail. Co. v. Hall* (1843), 5 Man. & Gr. 274; 42 Digest 59, 509).

(*k*) *Start v. West Mersea School Board* (1899), 15 T. L. R. 442; 13 Digest 396, 1201. *Sed Aliter* where the duties imposed are only those of a "necessary officer" under the Elementary Education Act, 1870 (since repealed), appointments of which officers under the Act could be made by parol (*Scott v. Clifton School Board* (1884), 14 Q. B. D. 500; 13 Digest 382, 1115).

(*l*) *R. v. Stamford Corpn.* (1844), 6 Q. B. 433; 13 Digest 381, 1108.

(*m*) *Sutton v. Spectacle Makers' Co.* (1864), 10 L. T. 411; 13 Digest 384, 1121.

(*n*) *Horne v. Ivy* (1870), 1 Ventr. 47; 18 Digest 381, 1107.

(*o*) *Smith v. Birmingham and Staffordshire Gas Light Co.* (1834), 1 Ad. & El. 526; 13 Digest 403, 1252.

company could have exercised as an individual shareholder (*p*); a local authority may authorise any member or officer, either generally or in respect of particular proceedings, to institute, defend, or appear in legal proceedings on its behalf (*q*); and the governing body of a corp'n. aggregate may appoint an agent either generally or in any particular case, to execute on its behalf any agreement or instrument not under seal in relation to matters within its powers (*r*). If an agent of a corp'n. is duly authorised under seal to alter or vary the details of a contract by the corp'n., and does so, the corp'n. is bound notwithstanding that the variations were not specifically authorised under the common seal (*s*).

[665]

The exceptions to the rule fall under four main heads :

(a) Where convenience amounts almost to necessity. "Wherever to hold the rule applicable would occasion very great inconvenience, or tend to defeat the very object for which the corp'n. was created, the exception has prevailed; hence the retainer by parol of an inferior servant, the doing of acts very frequently recurring, or too insignificant to be worth the trouble of affixing the common seal, are established exceptions" (*t*). Acts may also be done without the common seal if an overruling necessity requires them to be done at once (*u*). A trading company has a general power to contract without the common seal for all matters within the ordinary course of its business, provided that it is within the purpose for which the company was incorporated (*a*), but this does not apply to municipal corpns. (*b*). [666]

(b) If a corp'n. has power to bind itself by bill of exchange, cheque or promissory note, it may do so without using the common seal (*c*). In general, all corpns. have power to draw cheques (*d*), and a trading corp'n. has also power to make bills of exchange and promissory notes if the nature of its business necessarily involves such a power (*e*). But a non-trading corp'n. has not this last power unless expressly conferred upon it (*f*). [667]

(c) Where a corp'n. makes a contract within its powers which should have been under seal, and accepts the benefit of the executed work. There are three requisites, (1) that the purposes for which the corp'n. was created render it necessary that the work or goods in question should be done or supplied to carry those purposes into effect, (2) that orders

(*p*) Companies Act, 1929, s. 116; 2 Statutes 849.

(*q*) L.G.A., 1933, s. 277; 26 Statutes 452; this does not appear to alter the rule that an outside solicitor must still be retained under the common seal.

(*r*) Law of Property Act, 1925, s. 74 (2); 15 Statutes 248.

(*s*) *Williams v. Barmouth U.D.C.* (1897), 77 L. T. 383, 387, C. A.; 13 Digest 385, 1134.

(*t*) *Church v. Imperial Gas, etc., Co.* (1838), 6 Ad. & El. 846, *per* Lord DENMAN, C.J., at p. 861; 13 Digest 285, 169; *Wells v. Kingston-upon-Hull Corp'n.* (1875), L. R. 10 C. P. 402; 13 Digest 388, 1150.

(*u*) *Diggle v. London and Blackwall Rail. Co.* (1850), 5 Exch. 442; 13 Digest 380, 1105.

(*a*) *South of Ireland Colliery v. Waddle* (1869), L. R. 4 C. P. 617; 9 Digest 630, 4176. But if the contract is not in any way connected with the purpose for which the corp'n. was formed, the corp'n. cannot bind itself (*Paine v. Strand Union Guardians* (1846), 8 Q. B. 826; 13 Digest 394, 1186). The rule has now been made statutory; Companies Act, 1929, s. 29; 2 Statutes 790.

(*b*) *Wells v. Kingston-upon-Hull Corp'n.*, *supra*.

(*c*) Bills of Exchange Act, 1882, s. 91 (2); 2 Statutes 79.

(*d*) *Serrell v. Derbyshire, etc., Rail. Co.* (1850), 9 C. B. 811; 10 Digest 1175, 8336.

(*e*) *Peruvian Railways Co. v. Thames and Mersey Marine Insurance Co.* (1867), 2 Ch. App. 617; 9 Digest 640, 4223.

(*f*) Bills of Exchange Act, 1882, s. 22 (1); 2 Statutes 45.

are given by the corp'n. for such work or goods to carry into effect such purposes, and (3) that the work or goods are accepted by the corp'n. and the whole consideration for payment has become executed (g). But if the contract is still executory, and is not under seal, it cannot be enforced by either party (h). [668]

(d) There may be exceptions by statute or charter, e.g. sect. 33 of the Companies Act, 1929 (i), and the examples previously given as to appointment of agents with powers to bind the corp'n. by contract or otherwise (k). [669]

All these exceptions, however, only emphasise the general rule: "Either a seal, or some substitute for a seal, which by law shall be taken as conclusively evidencing the sense of the whole body corporate, is a necessity inherent in the very nature of a corp'n." (l).

As to enforcement by the corp'n. of a contract not under seal where the seal is required, in general it cannot be enforced (m), unless it has been wholly executed by the corp'n. and the other parties have received the benefit of it (n); it is not enforceable if the contract is only executory (o).

If a document which it was within the power of a corp'n. to execute has the common seal affixed to it by the persons having the legal custody of such seal, *prima facie* all preliminary requirements have been fulfilled; the corp'n. may show that it was so affixed without authority, but will only be allowed to do so on the clearest evidence (p). A purchaser in good faith and for valuable consideration is protected by statute if the seal of a corp'n. aggregate from whom he is purchasing is affixed to a deed in the presence of and attested by the clerk or other permanent officer of the corp'n. and a member of its governing body, and may assume that persons described as holding those offices in fact do so (q).

The seal must be kept in the custody of the proper officer; and *mandamus* issues to compel him to affix the seal in accordance with a proper direction from the corp'n. expressed by resolution of the majority of its members (r). He is entitled to satisfy himself that the instrument is one to which it is his duty to affix the seal, and as to the authority for his affixing it. See title COMMON SEAL. [670]

4. Capacity to Sue and be Sued in the Corporate Name.—A corp'n. may sue and be sued in its own name, that is, in the case of a corp'n.

(g) *Lawford v. Billericay R.D.C.*, [1903] 1 K. B. 772, C. A.; 13 Digest 394, 1193. A very large number of decisions as to what is and what is not covered by this exception are collected in 13 Digest 380—396. Note that s. 174 of the P.H.A., 1875, as to contracts of urban authorities under that Act, is repealed by L.G.A., 1933, and not reproduced by s. 266 of that Act, 26 Statutes 447, so that the general exception now applies to these contracts also, and the former case law is obsolete.

(h) *Kidderminster Corp'n. v. Hardwick* (1873) L. R. 9 Exch. 13; 13 Digest 390, 1163. (i) 2 Statutes 792. (k) *Ante*, p. 295.

(l) *Ludlow Corp'n. v. Charlton* (1840), 6 M. & W., per Rolfe, B., at p. 323; 13 Digest 285, 170.

(m) *Oxford Corp'n. v. Crow*, [1893] 3 Ch. 535; 13 Digest 387, 1143.

(n) *Fishmongers' Co. v. Robertson* (1843), 6 Scott (N. R.) 56, per TINDAL, C.J., at p. 105; 13 Digest 386, 1133; *Australian Royal Mail Steam Navigation Co. v. Marzetti* (1855), 11 Exch. 228; 13 Digest 389, 1154.

(o) *Kidderminster Corp'n. v. Hardwick*, *supra*.

(p) *Clarke v. Imperial Gas Light Co.* (1832), 1 Nev. & M. (K. B.) 206; 13 Digest 286, 175.

(q) Law of Property Act, 1925, ss. 74 (1), (5), 205 (1) (xxi.); 15 Statutes 248, 249, 333.

(r) *R. v. Kendall* (1841), 1 Q. B. 366; 13 Digest 288, 192.

aggregate, in the corporate name, and in the case of a corpn. sole in such a form as to indicate the corporate capacity (*s*). Unless for some reason the corpn. itself is not competent to commence legal proceedings, they cannot be commenced by individual corporators (*t*), even if the subject-matter is one which is voidable at the discretion of a majority thereof (*u*). Nor will the suit fail by reason of the death of one member (*a*). A corpn. may be authorised by statute to sue in the name of one of its officers, in which case it should sue and be sued in that name (*b*). By sect. 277 of L.G.A., 1933, a local authority may by resolution authorise any member or officer for this purpose in summary proceedings, either generally or in respect of a particular matter; if an officer is so authorised, he may take proceedings and enter into a recognisance under the Summary Jurisdiction Act, 1857, sect. 3 (*c*), in his own name (*d*), but this does not apply where he is only authorised to sue in the name of the local authority (*e*). See, further, titles ACTIONS BY AND AGAINST A LOCAL AUTHORITY; SUMMARY PROCEEDINGS. [671]

5. **Power to make Bye-laws.**—It was formerly held that every body corporate had power to make bye-laws regulating the purposes for which it was formed, but it is doubtful whether this power now extends to borough councils and other local authorities. See title BYE-LAWS on p. 360 of Vol. II. [672]

CREATION OF CORPORATIONS

1. **By Common Law.**—Corpns. sole, except where created by statute, exist by virtue of the common law. The only example of a corpn. aggregate owing its existence to the common law is Parliament. [673]

2. **By Prescription or Custom.**—A corpn. may exist by prescription, based on the usual theory of a lost grant or charter (*f*), and incidents may become attached by prescription to a corpn. originally created by grant or charter (*g*). [674]

3. **By Royal Charter.**—See title CHARTERS OF INCORPORATION. The granting or conferring of a Charter is a royal prerogative, and where a corpn. is incorporated by Royal Charter it can, in general, do anything that a private individual can do (*h*). The type of corpns. usually incorporated by Charter are municipal corpns., certain companies, *e.g.* the Bank of England, and certain professional and charitable organisations, *e.g.* the Law Society and the Boy Scouts' Association. The powers of the corpn. can naturally be limited by the terms of the charter, but the difference between a corpn. incorporated by charter and by any other means lies in the fact that a chartered corpn. has, by virtue of the royal prerogative, all the powers and capacities of a private individual unless the charter limits them, while any other corpn. has no powers at all unless the instrument of incorporation grants them;

(s) 1 Roll. Abr. 513.

(t) *Foss v. Harbottle* (1843), 2 Hare, 461; 13 Digest 417, 1377.

(u) *Mozley v. Alston* (1847), 1 Ph. 790; 9 Digest 666, 4436.

(a) *Blackburn v. Jepson* (1823), 3 Swan. 132; 13 Digest 414, 1339.

(b) *R. v. St. Katharine Dock Co.* (1832), 1 Nev. & M. (K. B.) 121; 13 Digest 427, 1509.

(c) 11 Statutes 301.

(d) *Lawrence v. Martin*, [1928] 2 K. B. 454; Digest (Supp.).

(e) *Leyton U.D.C. v. Wilkinson*, [1927] 1 K. B. 858; 33 Digest 413, 1229, and Supp.

(f) *Re Faversham Free Fishermen* (1887), 36 Ch. D. 329; 13 Digest 297, 281.

(g) But not if the corpn. was created in modern times (*R. v. Haughley (Inhabitants)*, ante, p. 294).

(h) *Sutton's Hospital Case* (1612), 10 Co. Rep. 1a, 23a; 13 Digest 270, 3.

it should be understood, however, that a chartered corp'n. is usually incorporated for certain purposes only, and their powers and capacities only operate within those purposes.

It appears that in the case of the corp'n. of a borough, which is incorporated by Charter, this position continues notwithstanding the Municipal Corpns. Acts (now largely repealed and included in L.G.A., 1933), and the corp'n. can still act in virtue of that capacity (*i*); but they are subject to the restrictions imposed by statute, and cannot apply the borough funds to purposes not being purposes so authorised (*k*). [675]

4. **By Statute.**—An Act of Parliament creating a corp'n. may either create specifically a single body, or provide a means whereby on complying with certain formalities any number of corpns. may be created. For the most part corporations so created are outside the scope of the present work. [676]

DISSOLUTION OF CORPORATIONS

1. **Surrender of Charter.**—It must clearly be shown that the intention of a corp'n. in surrendering its charter is that the corp'n. shall be dissolved, or it will not be dissolved (*l*), nor will it be if any purpose at all for which its continued existence is necessary remains (*m*). All members of the corp'n. must consent if all have an equal interest in the corporate property (*n*). [677]

2. **Forfeiture and Seizure of Liberties.**—This may be regarded as obsolete. [678]

3. **Revocation of Charter.**—This may be done by Act of Parliament, but not, apparently, by the Crown (*o*). But the Crown may, on petition, amend a municipal charter; see sect. 130 of L.G.A., 1933. [679]

4. **Failure of Members.**—The corp'n. is entirely distinct from its members, and failure of the latter will not so much dissolve as suspend the corp'n. It is apparently still good law, though now of academic interest only, that if an integral part of the corp'n. is gone, the corp'n. is to that extent dissolved (*p*). [680]

5. **By Legal Proceedings.**—These are in general outside the scope of this work. [681]

For dissolution of local authorities consequent upon adjustments of their administrative areas, see titles ALTERATION OF AREAS; COUNTY REVIEW.

THE CORPORATION AND ITS MEMBERS

Corpns., even where incorporated by statute, possess certain of their powers and incidents by virtue of their incorporatedness at common

(*i*) *A.-G. v. Manchester Corpn.*, [1906] 1 Ch. 643; 13 Digest 362, 972.

(*k*) *A.-G. v. Newcastle-upon-Tyne Corpn.* (1889), 23 Q. B. D. 492; 13 Digest 363, 974; *A.-G. v. Manchester Corpn.*, *supra*.

(*l*) *R. v. Grey* (1725), 8 Mod. Rep. 358; 13 Digest 434, 1564.

(*m*) *Norwich's (Dean and Chapter) Case* (1598), 3 Co. Rep. 73a; 13 Digest 278, 81.

(*n*) *Ward v. Society of Attornies* (1844), 1 Coll. 370; 13 Digest 287, 135.

(*o*) *R. v. Cambridge (Vice-Chancellor)* (1765), 3 Burr. 1647; 13 Digest 275, 42.

(*p*) 1 Roll. Abr. p. 514; *Banbury Corpn. Case* (1716), 10 Mod. Rep. 346; 13 Digest 435, 1580. While interesting as an example of the working of the common law rule, this last case is no longer an authority as to municipal corpns. by virtue of L.G.A., 1933, s. 72 (6); 26 Statutes 345. See title MAYOR.

law. In particular the relations between the corpn. as such and its members are so regulated.

A common law corpn. aggregate consisted of a minimum of at least two members, but with no maximum limit, except that the number must be definite and in some way capable of ascertainment, and it may be restricted by the constitution or by statute. The constitution may also restrict the classes of persons who may become members of the corpn., otherwise membership is open to any persons. Membership is usually obtained by election, but the corpn.'s constitution may provide any other method. No person may be made a member of a corpn. against his own will (*q*), and careful provision is made by a number of statutes, *e.g.* L.G.A., 1933, Second Schedule, Part I., para. 3, to prevent candidates being even nominated for election to certain corpns. without their consent. Probably the converse, that no corpn. need admit any person to membership against its will, is not the case in all circumstances. As a general rule, it is so (*r*), but the constitution may confer an absolute right on persons qualified in particular ways to membership. The true answer appears to be that the position is really mutual, that is, that neither an individual may be forced to become a member of a corpn., nor a corpn. forced to accept an individual as a member against their respective wills; but that if the corpn. has bound itself by its constitution to confer membership on persons qualified in a particular way, it has already expressed its will on the point. [682]

The corpn. may expel any person from membership, the method being by disfranchisement in the case of a corporator, and by amotion in the case of the holder of a corporate office. These powers of disfranchisement and amotion for a reasonable cause are incident to every corpn. unless they have been taken away by statute (*s*). The power to disfranchise varies in different corpns. according to the constitution; if the constitution so provides, the power may be exercised arbitrarily and there is no remedy (*t*), but this is not usual (*u*). [683]

A corpn. can only do corporate acts at a corporate meeting duly convened by the proper authority. If either by charter or custom meetings are to be held on a particular day, notice of the meeting is unnecessary as every member is presumed to have notice of it, but otherwise notice of the meeting must be given to every member of the corpn. who is qualified to attend. If the constitution provides a method of giving notice, or a particular method has become customary, that method must be followed; otherwise it must be given in reasonable time and in a reasonable manner. If a meeting is not properly convened, it is not a corporate meeting.

If the meeting is duly convened, those attending may bind the corpn. as a whole. Exactly how many need attend appears to be doubtful. The constitution may, and usually does, specify a quorum, or a custom as to the number of members forming one may have arisen. But one member does not constitute a meeting (*a*), and in general there must be a majority of the whole number of members

(*q*) *R. v. Askew* (1768), 4 Burr. 2186; 13 Digest 322, 580.

(*r*) *R. v. Eye Corpn.* (1822), 1 B. & C. 85; 18 Digest 333, 718.

(*s*) *Booth v. Arnold*, [1895] 1 Q. B. 571; 33 Digest 69, 422; but see the discussion in the title BOROUGH COUNCILOR, at pp. 174, 175 of Vol. II., as to whether a borough council still possess this power of amotion.

(*t*) *R. v. Andover (Village)* (1702), 12 Mod. Rep. 665; 13 Digest 306, 335.

(*u*) *R. v. Great Grimsby Corpn.* (1832), 1 L. J. (M. C.) 23; 33 Digest 92, 627.

(*a*) *Sharp v. Dawes* (1876), 2 Q. B. D. 26; 10 Digest 1109, 7801.

present (b). In theory of law, where a corp'n. aggregate has a head, no corporate act other than the election of a new head could be done without him (c), but the theory is now only a relic (d). [684]

By custom, and in many cases now by express statutory provision (e), the resolution of the majority of the members present is the resolution of the whole, *ubi maxima pars ibi tota*, and becomes a corporate act. But if the act is one which requires the common seal to be binding, it is a corporate act *inter se* only and not *inter alios* until the seal is affixed (e). Although the majority can thus bind the minority, they can only do so for purposes within the constitution of the corp'n. and not outside it (f), and if the majority do attempt to bind the minority in a matter not within their powers, or in cases of fraud, the minority can obtain relief (g). But if an act is one which the majority are legally entitled to do, but have in fact done irregularly, relief will not be granted to the minority as the majority can always regularise their proceedings.

The resolution, being a substitute for the common seal, is the only authentic evidence of what the corp'n. has done or agreed to do, and may not be added to or varied by the statements of individual members (h).

At common law a decision of a corporate meeting is taken by vote, being in the first instance by show of hands followed, if necessary, by a poll, and, if no other method is provided for in the constitution of the corp'n., the common law method is to be used (k). According to Lord Mansfield there is at common law no casting vote reserved to the chairman, though the constitution may provide for one (l). There is no common law right to vote by proxy or substitute (m).

The separation of the *persona* of the corp'n. from its members is complete, this being perhaps most strikingly illustrated in the case of companies (n), but the principle is of general application. There is no individual who can be considered as the oracle of the whole, and the resolution of a meeting, however numerously attended, is not the act of the whole body, unless it was a corporate meeting.

(b) *Mayor, etc., of Merchants of the Staple of England v. Bank of England* (1887), 21 Q. B. D. 160; 13 Digest 339, 777.

(c) Pollock and Maitland, "History of English Law," Vol. I., p. 491, where they speak of this conception as "anthropomorphism." The notion is worked out in the deeply interesting case of the *Abbot of Hulme v. The Mayor, etc. of Norwich*, (1439), Y. B. 18 Hen. VI.

(d) The absence of the mayor from a meeting is provided for by L.G.A., 1933, s. 20 (3), and Third Schedule, Part II., para. 3 (2), and the failure to elect a mayor at the proper time whereby the corp'n. would, at common law, have been dissolved, by s. 72 (2) (a); 26 Statutes 315, 497, 345.

(e) *Ante*, p. 295.

(f) *Simpson v. Denison* (1852), 10 Hare, 51; 13 Digest 362, 967.

(g) *Society of Practical Knowledge v. Abbott* (1840), 2 Beav. 559; 13 Digest 272, 7.

(h) *R. v. Pembridge (Inhabitants)* (1841), Car. & M. 157; 22 Digest 206, 1804; *Lee v. Magrath*, [1984] W. N. 156; and see Halsbury (Hailsham ed.), Vol. 13, p. 714 (a), title "Evidence."

(k) *Re Horbury Bridge Coal, Iron and Waggon Co.* (1879), 11 Ch. D. 109; 9 Digest 571, 3798.

(l) *Anon.* (1773), Lofft, 315; by L.G.A., 1933, the persons presiding at meetings for the election of a chairman of a county council (s. 4 (3)), a county alderman (s. 7 (5)), a borough alderman (s. 22 (5)), or a mayor (s. 19 (3)); persons presiding at meetings of local authorities (Third Schedule, Part V., para. 1 (2)), parish meetings (Third Schedule, Part VI., para. 5 (3)), or committees or joint committees (s. 96 (2)), have all casting votes (see 26 Statutes 308, 309, 315, 316, 357, 500, 503).

(m) *Harben v. Phillips* (1883), 23 Ch. D. 14; 28 Digest 120, 21.

(n) *Salomon v. Salomon & Co.*, [1897] A. C. 22; 9 Digest 84, 11.

For powers of a corpn. to hold land as an individual, see titles CORPORATE LAND; MORTMAIN. For criminal liability, see title CRIMINAL LIABILITY OF LOCAL AUTHORITIES, and for civil liability ACTIONS BY AND AGAINST LOCAL AUTHORITIES; EMPLOYEES, RESPONSIBILITY FOR ACTS OF; and ULTRA VIRES. [685]

COMMON LODGING HOUSES

See LODGING HOUSES.

COMMON RIGHTS, RATING OF

See RATING OF SPECIAL PROPERTIES.

COMMON SEAL

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See also titles : BYE-LAWS;
CONTRACTS;
CONVEYANCING.

Power and Obligation to Use Common Seal.—"A corpn. aggregate can as a general rule only act or express its will by deed under its common seal, for the seal is the only authentic evidence of what the corpn. has done or agreed to do. The power to possess and use a seal is incidental to a corpn." (a).

A county council is a body corporate with a common seal (b).

In a municipal borough the corporate body consists of the mayor, aldermen and burgesses of the borough, or if the borough is a city, the mayor, aldermen and citizens of the city (c). The seal used is that of the body corporate and should not purport to be the seal of the council. The right to use a common seal is conferred on the body corporate by the charter of incorporation. This plan is followed only as respects boroughs (d), thus urban and rural district councils are bodies corporate with a common seal (e).

(a) 8 Halsbury (Hailsham ed.), title "Corporation," p. 12. See also, generally, *ibid.*, pp. 12 *et seq.*; 13 Digest 159 *et seq.*; and notes in Arnold's Municipal Corporations (6th ed.), pp. 77 *et seq.*

(b) L.G.A., 1933, s. 2 (2); 26 Statutes 307.

(c) *Ibid.*, s. 17 (1).

(d) As to metropolitan boroughs, see *post*, p. 305.

(e) L.G.A., 1933, ss. 31 (2), 32 (2); 26 Statutes 320.

Parish councils are bodies corporate, but parish meetings are not. Neither can have a common seal. Instruments under seal to which parish councils are parties may be executed under the hands and personal seals of two members of the council (*f*). Instruments requiring to be sealed on behalf of parish meetings may be executed under the hands and personal seals of the person presiding at the meeting and two other local government electors present thereat (*g*). This provision extends to rural parishes with a parish council as well as to rural parishes with no parish council, but in the class of parish first mentioned it would very rarely be necessary that a document should be sealed on behalf of the parish meeting. Where a rural parish has not a separate parish council, sect. 47 (3) of the Act sets up for the parish a body corporate, called "the representative body of the parish of —," by whom any parish property would be held. This body has not a common seal, and any instrument which requires to be sealed is to be executed under the hands and personal seals of the members of the representative body (*h*).

Power to authorise the common seal to be used can only be delegated to the extent to which other functions of the local authority can be delegated, but this does not prevent the authority authorising the seal to be affixed by the appropriate persons to specified documents at any convenient subsequent time.

Mandamus will lie against a corpn. to compel it to affix its seal (*i*). [686]

Forgery of Common Seal.—Under the Forgery Act, 1913 (3 & 4 Geo. 5, c. 27), forgery of sealed documents and of certain seals and various offences in connection therewith are punishable (*j*). If an officer of a local authority commits a fraud purporting to act in the course of business such as he was authorised, or held out as authorised, to transact on behalf of the authority then the authority may be held liable for it (*k*). [687]

Form and Design of Common Seal.—The common seal of the local authority should be used exclusively as it is probable that a document bearing some other seal, although otherwise properly executed, would be invalid (*l*). A local authority cannot have more than one common seal.

Owing to the doubts and embarrassments which are thereby caused the design of the seal should not be changed except for very good reasons, such as a change in the status of the authority or in the coat of arms; indeed the power to change the design of the seal has been doubted (*m*).

A plain impression, a wafer, an embossed seal or an inking device may be used.

(*f*) L.G.A., 1933, s. 48 (3). As to bye-laws, see *ibid.*, s. 250 (2); 26 Statutes 441.

(*g*) *Ibid.*, s. 47 (2); 26 Statutes 328.

(*h*) *Ibid.*, s. 47 (4).

(*i*) 8 Halsbury (Hailsham ed.), title "Corporations," p. 15; see also note in Arnold's Municipal Corpn. (6th ed.), p. 154.

(*j*) Ss. 1—5; 4 Statutes 787 *et seq.*

(*k*) *Lloyd v. Grace, Smith & Co.*, [1912] A. C. 716; 1 Digest 595, 2284; see also Halsbury and Digest, titles "Agency," "Corporations," "Misrepresentation and Fraud," "Tort."

(*l*) 8 Halsbury (Hailsham ed.), title "Corporations," p. 13, and 10 Halsbury (Hailsham ed.), title "Deeds," pp. 203 *et seq.*

(*m*) Brice, *Ultra Vires* (3rd ed.), p. 5.

A local authority cannot properly assume arms except by royal licence following an application to the College of Arms (*n*), and if a coat of arms is used in the design of the common seal, it should be in the form recorded in the College of Arms. Otherwise there is no restriction upon the form or design of the seal. [688]

Practice.—In view of the importance of guarding against the forgery of sealed conveyances, mortgages or other documents, it is essential that every possible precaution should be taken to prevent the unauthorised use of the common seal. The sealing press itself should have some locking device, should be enclosed in a locked case and kept in a position where it is under daily observation by a responsible officer. In the case of the more important authorities, there should be included in the sealing machine an automatic numbering device, and each impression of the seal should be numbered. The same number should appear on the sealing machine, on the document and in the register of seals. Each document should be properly numbered and entered in the register. A convenient practice is for one set of keys to be kept by the mayor or chairman, with a duplicate set held by a deputy, and for the keys of the case in which the seal is kept to be in the custody of the clerk. A sealing order containing particulars of a resolution of the council and authenticated by a responsible clerk should be presented with each document to be sealed. The chairman and clerk, or their respective deputies, should be present when the seal is actually used, and the attestation of the sealing should bear the manuscript signature of one or both.

In order to guard against a misuse of the seal, it is desirable to prescribe in the standing orders of the council made under para. 4 of Part V. of the Third Schedule to the L.G.A., 1933, the nature of the authority to be given and the conditions to be observed, when the sealing of a document is directed or effected. The persons in whose custody the keys of the seal are to be placed should also be prescribed.

Occasionally a mayor or chairman is asked to authenticate by his seal a document required by foreign law, *e.g.* a certificate of identity or an inventory of property. In such cases the personal seal of the mayor or chairman should be used and not the common seal of the authority.

It is the practice of some local authorities to seal their minutes, but there does not appear to be any necessity or justification for this practice.

Whenever a local authority is dissolved or superseded its common seal should be defaced or destroyed. [689]

London.—The corpn. of the City of London is "the Mayor, Commonalty and Citizens of the City of London" (*o*), and the seal is the seal of the body corporate not of the Common Council of the City.

The City Seal is protected by the following regulations:

It is only affixed in open court, after formal resolution. The keys are different and three in number, kept respectively by the Lord Mayor, the Chamberlain (as representing the Court of Aldermen) and the Comptroller (or Vice-Chamberlain) as the representative of the Court of Common Council; and the seal is only affixed to a document after the

(*n*) See title ARMS, COAT OF, at p. 429 of Vol. I.

(*o*) See the Act 2 Wm. & Mary, c. 8.

same has been examined and signed by one of the law officers of the corpⁿ.

The Common Council thus possesses control over the landed property and estates of the corpⁿ. and the corporate seal cannot be affixed without its direction (*p*).

This plan of incorporating the inhabitants was not followed when metropolitan borough councils were constituted under the London Government Act, 1899, and sect. 1 of that Act (*q*) authorised a council for each metropolitan borough to be established and incorporated by Order in Council. Power to use a common seal was conferred on the borough councils by these Orders (*r*).

In this matter the L.C.C. is in the same position as other county councils. [690]

(*p*) See Royal Commission on Unification of London, 1893, App., pp. 38, 370.

(*q*) 11 Statutes 1225.

(*r*) S.R. & O., 1900, Nos. 380—497.

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OPEN SPACES;*
PUBLIC HEALTH;
PUBLIC PARKS;
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* For a collection of all powers of a local authority to maintain open land for health and pleasure.

FOR THE GENERAL LAW RELATING TO RIGHTS OF COMMON, THE POWERS OF COMMONERS, ETC., see HALSBURY'S LAWS OF ENGLAND (2ND ED.), VOL. 4, TITLE "COMMONS AND RIGHTS OF COMMON."

INTRODUCTORY

The term "common" is applied in ordinary parlance to any extent of ground to which access is not effectively denied to the public
L.G.L. III.—20

and which is not agriculturally valuable. It is used, however, of places varying so widely in quality that no definition that is at all likely to be useful can be given. This meaning of the term is however of practical importance, since there is an impression widely held that the public have undefined rights of access to any land so termed. This impression has been, since the passing of the Law of Property Act, 1925, partially justified. It is with regard to the use of commons as places of recreation for the public that local authorities are chiefly concerned, and this article deals with the means by which such a use may be secured and regulated and with the means by which action which would tend to hinder such a use either present or potential may be prevented. The importance of places of recreation for the public was realised in the middle of the last century, and led to an increasingly severe restriction of inclosures of commons (a). The initiators of any policy of providing recreation places for the public were bound to have their attention directed largely to "commons" which are frequently of little value and consequently can be more cheaply adapted for use as places of recreation than other land. During the eighteenth and part of the nineteenth centuries, commons had been of great practical importance from a different point of view, namely, their inclosure for purposes of agricultural improvement, and consequently had given rise to a large body of legal doctrine, and it was in 1866, and still is necessary, for this reason, to treat commons in a different manner from other areas for recreation. The general powers of local authorities with respect to places for recreation for the public will be found under the title OPEN SPACES. A local authority may deal with commons under the general powers of the Town and Country Planning Act, 1932, and it is of course contemplated that in their proceedings under this Act they will have full regard to commons in considering how best to plan their areas. It is interesting to note, however, that even in this Act, which assumes that the planning authorities will take a balanced view of all the relative advantages and disadvantages of the alternative methods of dealing with any particular piece of land, the peculiar position of commons is recognised by the restrictions on the acquisition or appropriation of land forming part of a common contained in the Third Schedule, Part II., para. 4, to the Act (b). The expression "common" is defined in the same paragraph to include any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green (c). [691]

REGULATION

The Acts relating to the regulation of commons (not necessarily by the local authority) from this point of view are :

- (1) The Law of Property Act, 1925, sects. 193, 194 (d).
- (2) The Commons Act, 1899 (e).
- (3) The Commons Act, 1876 (f).

(a) *E.g.* Inclosure Act, 1845, ss. 14, 15 ; Inclosure Act, 1852, s. 1 ; Metropolitan Commons Act, 1866, s. 5 ; Commons Act, 1876 ; Preamble ; 2 Statutes 446, 447, 539, 567, 579.

(b) 25 Statutes 532.

(c) For the explanation of what this expression includes, see *post*, p. 307.

(d) 15 Statutes 371.

(e) 2 Statutes 607.

(f) *Ibid.*, 579.

- (4) The Metropolitan Commons Acts, 1866 to 1898 (*g*), which relate only to a common the whole or any part of which was within the metropolitan police district as defined at the passing of the Act. [692]

"Common" is defined in sect. 37 of the Commons Act, 1876 (*h*), and in sect. 3 of the Metropolitan Commons Act, 1866, as extended by sect. 2 of the Metropolitan Commons Amendment Act, 1869 (*i*), as including any land liable to be inclosed under the Inclosure Act, 1845 (*k*). The definitions differ slightly in wording, but are to this effect. The Commons Act, 1899, by sect. 15 (*l*), defines a "common" as above, but adds to the definition "any town or village green" (*m*). The extended definition of "common" in the Commons Act, 1899, has appeared in several other statutes (*n*). [693]

The lands that are regulated under these Acts are usually wastes of manors subject to grazing rights or to rights of turbary (*i.e.* of cutting turf for fuel), or lands not waste but grazed in common by the several various owners of the lands or by persons having rights of common over the land.

Allotments made under inclosure Acts for the purpose of being used in common, *e.g.* gravel allotments, have been treated as within the definition. [694]

Law of Property Act, 1925, sects. 193, 194 (*o*).—Sect. 193 makes a change in the law by providing that the public shall have rights of access for air and exercise to any land which is (1) a metropolitan common, or (2) manorial waste, or (3) a common (*p*) which is wholly or partly situated within a borough or urban district. Furthermore, the lord of the manor or any other person entitled to the soil of any land subject to rights of common may by deed revocable or irrevocable declare that the section applies to any land subject to rights of common at January 1, 1926. The deed should then be deposited with the Minister of Agriculture, and upon its being deposited and for as long as the deed remains operative the section applies to the land. The rights of access cease to apply to any land to which the section applies if the commonable rights are extinguished under any statutory provision, or if the commonable rights are otherwise extinguished, but in the latter case only if the council of the county or county borough in which the land is situate assent to the cessation by resolution approved by the Minister of Agriculture. The rights of access given by the section,

(*g*) 2 Statutes 567—607.

(*h*) *Ibid.*, 600.

(*i*) *Ibid.*, 567.

(*k*) The definition is to be found in s. 11 of the Inclosure Act, 1845; 2 Statutes 445. It includes all lands subject to any rights of common, all gated or stinted pastures, all land held, occupied or used in common, all land in which the right to the vesture, herbage or woods growing thereon is separate from the property of the soil and all lot meadows the enjoyment of the separate lots of which is subject to interchange among the respective owners.

(*l*) 2 Statutes 611.

(*m*) For the meaning of town or village green, see title VILLAGE GREEN.

(*n*) *E.g.* Light Railways Act, 1896, s. 21; 14 Statutes 261; Development and Road Improvement Funds Act, 1909, s. 19 (4); 9 Statutes 216; Housing Act, 1925, s. 103 (4); 13 Statutes 1059; P.H.A., 1925, s. 69 (5); 13 Statutes 1146; Town and Country Planning Act, 1932, Third Schedule, Part II., para. 4 (iv.); 25 Statutes 532.

(*o*) 15 Statutes 371.

(*p*) This term is undefined by the Act.

however, are subject to any Act, scheme, or provisional order for the regulation of the land and to any bye-law, regulation or order made thereunder, or under any other statutory authority, thus not infringing any scheme of regulation under the Metropolitan Commons Acts or the Commons Acts. The section provides for some regulation of the land to which it applies by prohibiting the driving of vehicles, camping and the lighting of fires thereon under penalties. The two last prohibitions should be of value to local authorities as well as to landowners, since it makes actions which frequently cause undesirable results punishable offences without relying on the vindication of any private rights which in these cases are often difficult to ascertain and consequently too cumbrous to enforce in practice. The Minister of Agriculture, moreover, may on the application of the lord of the manor or any one entitled to the soil of the land or to any commonable rights affecting the land, limit and condition the rights of access or the extent of the land affected by them to any extent he thinks desirable to protect beneficial interests in the land or to protect any object of historical interest. The section does not prevent the getting and removal of minerals and any consequent letting down of the surface of a manorial waste or common. The section does not apply to any common or manorial waste which is for the time being held for Naval, Military or Air Force purposes, and in respect of which rights of common have been extinguished or cannot be exercised. Sect. 194 prohibits the erection, without the consent of the Minister of Agriculture (*g*), of any work such as buildings or fences which prevents or impedes access to any land to which the section applies. Its application is somewhat different from that of sect. 193. It applies to any land which on January 1, 1926, was subject to rights of common. It ceases to apply if the rights of common are extinguished under any statutory provision or if the council of the county or county borough in which the land is situate by resolution approved by the Minister of Agriculture assent to the section ceasing to apply when the rights of common are extinguished otherwise than under any statutory provision. The only works to which the section does not apply are those specially authorised by an Act or erected in pursuance of an Act, or order having the force of an Act, or erected in connection with the working of minerals, and telegraphic lines are also included (*r*). The section allows the council of any county or borough or district concerned or the lord of the manor or any other person interested in the common to apply to the county court for an order to remove any work erected without the Minister's consent. [695]

Commons Act, 1899.—The simplest and least expensive procedure is under the Commons Act, 1899, which enables the council of any county borough, borough or urban or rural district (*s*) to make a scheme for the regulation and management of any common within their district with a view to the expenditure of money on its drainage, levelling or improvement, and to the making of bye-laws and regulations for the prevention of nuisances and the preservation of order on the common.

(*g*) A fee of £2 is payable to the Minister on his giving his consent; S.R. & O., 1929, No. 314.

(*r*) For a definition of telegraphic lines, see Telegraph Act, 1878, s. 2; 19 Statutes 261.

(*s*) Commons Act, 1899, ss. 1, 13; 2 Statutes 607, 610; L.G.A., 1894, s. 21 (3); 10 Statutes 792.

Not less than three calendar months before the making of a scheme the council must give notice of their intention to make it (i) in the following manner (u) :

- (a) by an advertisement in at least one newspaper having a wide circulation in the neighbourhood of the common—the advertisement to be twice inserted with an interval of not less than one week between the insertions ;
- (b) by copies posted at two or more places on the common ;
- (c) by service of a copy of the notice upon the council of every parish in which any part of the common is situate ; and
- (d) by registered letter sent to every person entitled, as lord of the manor or otherwise, to the soil of the common, and addressed to his usual or last known place of abode. Where the persons so entitled are numerous the Minister of Agriculture and Fisheries may dispense with such notice.

Whenever his Majesty is so entitled, the notice is to be sent to the Commissioners of Crown Lands, unless his Majesty is so entitled in right of the Duchy of Lancaster, in which case it is to be sent to the Chancellor of the Duchy of Lancaster.

Whenever the Duke of Cornwall is so entitled, the notice is to be sent to the Lord Warden of the Stannaries.

The notice and advertisement must be in the following form or to the like effect :

FORM OF NOTICE

Commons Act, 1899

NOTICE is hereby given that the Council intend to make a Scheme under the above Act for the regulation and management of COMMON in their District with a view to the expenditure of money on the drainage, levelling and improvement of the Common, and to the making of bye-laws and regulations for the prevention of nuisances and the preservation of order thereon.

Copies of the draft of the Scheme may be obtained (price [Not exceeding] sixpence per copy) and the plan therein referred to may be inspected at the offices of the Council.

Any objection or suggestion with respect to the Scheme or plan may be sent, post free, to the Secretary, Ministry of Agriculture and Fisheries, 10, Whitehall Place, London, S.W.1, within three months from the date of this notice.

Clerk of the above Council.

[Date.]

Copies of the draft scheme are to be placed on sale at the office of the council and the plan referred to in the scheme is to be available at the office for inspection by any person interested.

A copy of the draft scheme and plan is to be sent as soon as possible to the Minister of Agriculture and Fisheries (a). [696]

The form of scheme is prescribed by the Commons Regulations, 1924 (b), and is as follows :

FORM OF SCHEME

1. The piece of land with the ponds, streams, paths, and roads thereon commonly known as Common, situate in the parish of in the County of and hereinafter referred to as "the common," as the same is delineated in a plan sealed by, and deposited at the office of the

(i) S. 2 of Commons Act, 1899 ; 2 Statutes 608.

(u) The form of notice and the procedure is prescribed by S.R. & O., 1924, No. 1157.

(a) Commons Act, 1899, s. 2 ; 2 Statutes 608.

(b) S.R. & O., 1924, No. 1157.

District Council of _____, hereinafter called "the council," and thereon coloured green, being a "Common" within the meaning of the Commons Act, 1899, shall henceforth be regulated by this scheme, and the management thereof shall be vested in the council.

N.B.—The Ministry require the latest available edition of the 1/2500 scale Ordnance Survey Map to be used, and they give directions as to the preparation of the plan.

2. The powers of the Council generally as to appointing or employing officers and servants and paying them under the general Acts applicable to the Council shall apply to all such persons as in the judgment of the Council may be necessary and proper for the preservation of order on and the enforcement of bye-laws with respect to the common and otherwise for the purposes of this Scheme, and the Council may make rules for regulating the duties and conduct of the several officers and servants so appointed and employed and may alter such rules as occasion may require.

3. The Council may execute any necessary works of drainage, raising, levelling, or fencing, or other works for the protection and improvement of the common, and shall preserve the turf, shrubs, trees, plants, and grass thereon, and for this purpose may, for short periods, enclose by fences such portions as may require rest to revive the same, and may plant trees and shrubs for shelter or ornament, and may place or erect seats, shelters, pavilions, drinking fountains and conveniences upon and light the common and otherwise improve the common as a place for exercise or recreation; but the Council shall do nothing that may otherwise vary or alter the natural features or aspect of the common or interfere with free access to every part thereof, and shall not erect upon the common any shelter, pavilion or other building without the previous consent of the person entitled to the soil of the common.

4. The Council shall maintain the common free from all encroachments, and shall not permit any trespass on or partial or other enclosure of any part thereof.

5. The inhabitants of the district and neighbourhood shall have a right of free access to every part of the common and a privilege of playing games and of enjoying other species of recreation thereon, subject to any bye-laws made by the Council under this Scheme.

6. The [*here insert description of any particular trees or objects of historical, scientific or antiquarian interest*] are, so far as possible, to be preserved by the Council.

7. The Council shall have power to repair and maintain the existing paths and roads on the common and to set out, construct, and maintain or authorise the construction and maintenance of such new paths and roads on the common as appear to the Council to be necessary or expedient, and to take any proceedings necessary for the stopping or diversion of any highway over the common.

8. The Council may, for the prevention of accidents, fence any quarry, pit, pond, stream, or other like place on the common.

9. The Council may set apart for games any portion or portions of the common as they may consider expedient, and may form cricket grounds and may allow the same to be temporarily enclosed with any open fence, so as to prevent cattle and horses from straying thereon; but such grounds shall not be so near to any dwelling-house or road as to create a nuisance or be an annoyance to the inhabitants of the house or to persons using the road.

10. The Council may, for the prevention of nuisances and the preservation of order on the common, and subject to the provisions of Section 10 of the Commons Act, 1899 (c), make, revoke, and alter bye-laws for any of the following purposes, viz.:

- (a) For prohibiting the deposit on the common, or in any pond or stream thereon, of road-sand, materials for repair of roads, dung, rubbish, litter, wood or other matter.
- (b) For prohibiting any person without lawful authority from digging, cutting, or taking turf, sods, gravel, sand, clay, or other substance on or from the common, and from cutting, felling, or injuring any gorse, heather, timber, or other tree, shrub, brushwood, or other plant growing on the common.
- (c) For regulating the place and mode of digging and taking turf, sods, gravel, sand, clay, or other substance, and cutting, felling, and taking trees or underwood on or from the common in exercise of any right of common or other right over the common.

- (d) For prohibiting the injury, defacement, or removal of seats, shelters, pavilions, fences, notice-boards, or other things put up or maintained by the Council on the common.
- (e) For prohibiting or regulating the posting or painting of bills, placards, advertisements, or notices on trees or fences, erections or notice-boards on the common.
- (f) For prohibiting any person without lawful authority from bird catching, setting traps or nets, or liming trees or laying snares for birds or other animals, taking birds' eggs or nests, and shooting or chasing game or other animals on the common.
- (g) For prohibiting or regulating the drawing, driving or placing upon the common without lawful authority of any carriage, cart, caravan, truck, motor vehicle, motor cycle, aeroplane, flying machine or other vehicle, and the erecting or permitting to remain on the common, without the consent of the Council or other lawful authority, of any building, shed, tent, fence, post, railing, or other structure, whether used in connection with the playing of games or not.
- (h) For prohibiting (except in the case of a fair lawfully held) or regulating the placing on the common of any photographic cart, or of any show, exhibition, swing, roundabout, or other like thing.
- (i) For prohibiting or regulating the lighting of any fire on the common.
- (j) For prohibiting or regulating the firing or discharge of firearms or the throwing or discharge of missiles on the common.
- (k) For regulating games to be played and other means of recreation to be exercised on the common, and assemblages of persons thereon.
- (l) For regulating the use of any portion of the common temporarily enclosed or set apart under this scheme for any purpose.
- (m) For prohibiting or regulating horses being exercised or broken in without lawful authority by grooms or others on the common.
- (n) For prohibiting or regulating the landing or departure of any aeroplanes and flying machines on or from the common.
- (o) For prohibiting any person without lawful authority from turning out or permitting to remain on the common any cattle, sheep, or other animals.
- (p) For prohibiting any person from bathing in any pond or stream on the common save in accordance with regulations made by the Council.
- (q) Generally, for prohibiting or regulating any act or thing tending to injury or disfigurement of the common or to interference with the use thereof by the public for the purposes of exercise and recreation.
- (r) For authorising any officer of the Council, after due warning, to remove from the common any vehicle or animal drawn, driven or placed or any structure erected or placed thereon in contravention of any bye-law made under this Scheme or to exclude from the common any person who within his view commits, or whom he reasonably suspects of committing an offence against any such bye-law or against the Vagrancy Act, 1824 (*d*).
- (s) For prohibiting the hindrance or obstruction of an officer of the Council in the exercise of his powers or duties under this Scheme or under any bye-laws made thereunder.

11. All bye-laws made under this Scheme shall be published on notice-boards placed on such parts of the common (not less than) as to the Council may appear desirable.

12. Nothing in this Scheme or any bye-law made thereunder shall prejudice or affect any right of the person entitled as lord of the manor or otherwise to the soil of the common or of any person claiming under him which is lawfully exercisable in, over, under, or on the soil or surface of the common in connection with game, or with mines, minerals, or other substrata or otherwise, or prejudice or affect any right of the commoners in or over the common or the lawful use of any highway or thoroughfare on the common, or affect any power or obligation to repair any such highway or thoroughfare.

13. Printed copies of this Scheme and of any bye-laws made thereunder shall at all times be sold at the office of the Council to all persons desiring to buy the same at a price not exceeding sixpence each. [697]

Modifications which appear to the council to be necessary or expedient may be included in the council's scheme, if approved by the Minister of Agriculture and Fisheries.

After the expiration of three months from the giving of the notice the Minister is to take into consideration any objections or suggestions made, and for that purpose may, if he thinks fit, direct that an inquiry be held by an officer of the Minister. See title INQUIRIES.

The Minister may by order approve the scheme, subject to such modifications, if any, as he may think desirable, and thereupon the scheme has full effect, but if before he has approved of the scheme, he receives a written notice of dissent either—

- (a) from the person entitled as lord of the manor or otherwise to the soil of the common ; or
- (b) from persons representing at least one-third in value of such interests in the common as are affected by the scheme,

and such notice is not subsequently withdrawn, the Minister cannot proceed further in the matter (e). [698]

No estate, interest, or right of a profitable or beneficial nature in, over, or affecting any common shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by a scheme without compensation being made or provided for the same by the council making the scheme, and such compensation, in case of difference, shall be ascertained and provided in the same manner as if it were for the compulsory purchase and taking, or the injurious affecting, of lands under the Lands Clauses Acts (f). [699]

The management of any common regulated by a scheme thus made by a council is vested in the council (g).

An R.D.C. may delegate to a parish council any of their powers of management in relation to any commons within the parish regulated by a scheme, and thereupon the P.H. Acts apply as if the parish council were a parochial committee (h).

A parish council may agree to contribute the whole or any portion of the expenses of and incidental to the preparation and execution of a scheme for the regulation and management of any common within their parish, including any compensation paid under the Act (i). The expenses of a parish council are by sect. 193 of the L.G.A., 1933 (k), to be met by the issue of precepts to the R.D.C. and are chargeable separately on the parish and are subject to the restrictions imposed by that section. [700]

The council of any borough or urban district may, with a view to the benefit of the inhabitants of the borough or district, and subject to the approval of the Minister of Health, enter into an undertaking with any other council making or having made a scheme, to contribute any portion of the expenses incurred by that council in executing the scheme (l). [701]

A council may acquire the fee simple of or any estate in or any rights in or over any common regulated by a scheme, by gift or by purchase

(e) Commons Act, 1899, s. 2 ; 2 Statutes 608.

(f) *Ibid.*, s. 6.

(g) *Ibid.*, ss. 3, 13.

(h) *Ibid.*, s. 4. The powers of delegation by an R.D.C. to a parochial committee are now contained in s. 87 of the L.G.A., 1933 ; 26 Statutes 353.

(i) Commons Act, 1899, s. 5 ; 2 Statutes 609.

(k) 26 Statutes 411.

(l) Commons Act, 1899, s. 12 ; 2 Statutes 610.

by agreement, and hold the same without licence in mortmain for the purposes of the scheme (*m*). [702]

No highway authority may take gravel or other materials from any common regulated by a scheme without the consent of the council having the management of the common, or an order of petty sessions (*n*). [703]

The power to make a scheme includes power to amend or supplement a scheme (*o*).

The provisions with respect to bye-laws contained in the unrepealed portions of sects. 183 and 184 of the P.H.A., 1875, and sects. 250—252 of the L.G.A., 1933 (*p*) (see title BYE-LAWS), apply to all bye-laws made in pursuance of a scheme. Any fine imposed by a bye-law is recoverable summarily and payable to the council in whom the management of the common is vested. The Minister of Health is the confirming authority for the bye-laws (*q*). [704]

All expenses incurred by the Minister of Agriculture and Fisheries in relation to a scheme made by a council, and all expenses of and incidental to the preparation and execution of the scheme (including any compensation paid under the Act) must be paid by the council (*r*). [705]

No scheme can be made in relation to any common, the whole or part of which is in the metropolitan police district as defined in 1866, or which is regulated under the Inclosure Acts, or which has been acquired or managed under the Corp'n. of London (Open Spaces) Act, 1878 (*s*), or any Act therein referred to, or which is regulated as an open space under any private or local and personal Act, or which is subject to bye-laws made by a parish council under sect. 8 of the L.G.A., 1894 (*t*). [706]

Commons Act, 1876.—This Act provided for the inclosure as well as the regulation of commons, but by its preamble declared strongly against a policy of inclosure in severalty as opposed to regulation (*u*). Where a common has been regulated under this Act it may not by sect. 36 be inclosed without the subsequent sanction of Parliament (*a*). The procedure for regulation of commons by local authorities under the Commons Act, 1876 (*b*), is more cumbrous and expensive than under the Commons Act, 1899, but in some cases may still be useful, *e.g.* where it is desirable to ascertain the rights of common affecting the land proposed to be regulated, or where the lord of the manor or the commoners desire to appoint some of the conservators. [707]

The local authorities empowered to undertake the management of commons under a Provisional Order made under the Commons Act, 1876, are—

- (a) councils of boroughs and urban districts which contain five thousand or more inhabitants according to the last published

(*m*) Commons Act, 1899, s. 7; 2 Statutes 609.

(*n*) *Ibid.*, s. 8; Commons Act, 1876, s. 20; 2 Statutes 595. See *post*, pp. 316, 317.

(*o*) *Ibid.*, s. 9; 2 Statutes 609.

(*p*) 13 Statutes 705; 26 Statutes 440.

(*q*) Commons Act, 1899, s. 10; 2 Statutes 610.

(*r*) *Ibid.*, s. 11.

(*s*) 41 & 42 Vict. c. cxxvii.

(*t*) Commons Act, 1899, s. 14; 2 Statutes 610, 611; L.G.A., 1894, s. 8; 10 Statutes 780.

(*u*) 2 Statutes 579.

(*a*) *Ibid.*, 600.

(*b*) *Ibid.*, 579.

census for the time being, as regards any common or part of a common within six miles of the town measured from the town hall, if there is one or if not from the cathedral or church, if there is only one, but if there is more than one from the principal market place (c) ;

- (b) councils of boroughs or urban or rural districts, irrespective of population, as regards any common or part of a common within the borough or district, but this power is only to be exercised with the consent of the county council (d) ;
- (c) county boroughs as regards any common or part of a common within the borough (e). [708]

An application by a local authority to the Minister of Agriculture and Fisheries for a Provisional Order must also be signed by persons representing at least one-third in value of the interests in the common which are proposed to be affected (f). For form of application, see *Encyclopædia of Forms and Precedents* (2nd ed.), Vol. III., "Commons," p. 676.

The application must be advertised in a paper circulating in the neighbourhood, and in such other manner as the Minister directs (g).

Notice of the application must be given to the councils of the district and parish in which the common is situate, and also to any other council which under the provisions above referred to is authorised to undertake the management of the common (h). It is then referred to an officer of the Minister, who holds a local inquiry. [709]

If the Minister is satisfied by the report of the officer that it is expedient to proceed further in the matter, the Ministry draft a Provisional Order, which is deposited in the parish for consideration by the parties interested.

The Order may provide (i)—

- (a) for the determination of the commonable and other rights affecting the common, and in certain cases for the restriction, modification or abolition of the rights on compensation made to the person aggrieved ;
- (b) for the draining, manuring, or levelling of the common ;
- (c) for the planting trees on parts of such common, or in any other way improving or adding to the beauty of the common ;
- (d) for the making or causing to be made bye-laws and regulations for the prevention of or protection from nuisances, or for keeping order on the common ;
- (e) for the general management of such common ;
- (f) for the appointment from time to time of conservators of the common for the purposes aforesaid ;
- (g) that free access is to be secured to any particular points of view ;
- (h) that particular trees or objects of historical interest are to be preserved ;

(c) Commons Act, 1876, s. 8 ; 2 Statutes 583.

(d) L.G.A., 1894, ss. 26 (2), 21 (3) ; 10 Statutes 795, 792.

(e) *Ibid.*, s. 26 (7) ; 10 Statutes 796.

(f) Commons Act, 1876, s. 2 ; 2 Statutes 581.

(g) *Ibid.*, s. 10 (1).

(h) L.G.A., 1894, ss. 8 (4), 26 (2) ; 10 Statutes 781, 795 ; Commons Act, 1876, ss. 8, 10 ; 2 Statutes 583—587.

(i) Commons Act, 1876, ss. 3—5, 7 ; 2 Statutes 581—583.

- (i) that there is to be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times and in such manner and on such parts of the common as may be thought suitable, care being taken to cause the least possible injury to the persons interested in the common (*k*) ;
- (j) that carriage roads, bridle paths, and footpaths over such common are to be set out in such directions as appear most commodious ;
- (k) that any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood ;
- (l) the appropriation of an allotment for the labouring poor (*l*).
[710]

The Minister can make such provision as he thinks fit as to the appointment of conservators. The local authority who apply for a Provisional Order are not necessarily entrusted with the management, but the Act provides that where a local authority make the application or undertake to make any contribution or to pay any compensation or to make any other payment in respect of a common (*m*), the local authority may, if the Minister deems it advisable, having regard to the benefit of the neighbourhood as well as to private interests, be invested with such powers of management or other powers as may be expedient (*n*). For form of Provisional Order, see *Encyclopædia of Forms and Precedents* (2nd ed.), Vol. III., "Commons," pp. 693—699.
[711]

The Minister, when satisfied that the draft order has received the consent of the lord of the manor and two-thirds in value of the interests in the common which are affected (*o*), can certify the expediency of the order, but it does not take effect until it has been confirmed by an Act of Parliament (*p*).

When the Bill is confirmed a meeting of the persons interested in the common is convened for the purpose of appointing a valuer, subject to confirmation of the appointment by the Minister (*q*). The valuer's duties extend to :

- (1) the setting out of any field gardens provided for by the Order, and fencing and preparing these allotments for use ;
- (2) the sale of any land authorised to be sold for the payment of the expenses of the regulation ;
- (3) the determination of the commonable or other rights and interests by the Order directed to be determined ; and
- (4) the framing of an award to carry out the provisions of the Order. [712]

(*k*) See *Mitcham Common Conservators v. Cox*, [1911] 2 K. B. 855 ; 11 Digest 88, 1078 ; *Harris v. Harrison* (1914), 111 L. T. 534 ; 11 Digest 89, 1080.

(*l*) Commons (Expenses) Act, 1878, s. 4 ; 2 Statutes 601.

(*m*) See *post*, p. 316.

(*n*) Commons Act, 1876, s. 8 ; 2 Statutes 583.

(*o*) As to consents necessary where freemen, burgesses, or inhabitant householders of a city borough or town are interested, see Commons Act, 1876, s. 12 (6) ; 2 Statutes 590.

(*p*) Commons Act, 1876, s. 12 (10), (11) ; 2 Statutes 591.

(*q*) *Ibid.*, ss. 18, 32 ; Inclosure Act, 1845, ss. 33 *et seq.* ; 2 Statutes 592, 599, 453.

The expenses of obtaining a Provisional Order and the expenses of the improvement and protection of a common regulated by such an Order may, if so provided by the Order, be raised by the sale of a portion of the common, but the area sold for expenses of improvement or protection may not exceed one-fortieth of the total area. These latter expenses may also, if so provided by the Order, be raised by rates levied on the persons and in respect of the property who and which are benefited or principally benefited by the improvement or regulation (*r*). [713]

A Provisional Order under the Act may be made in respect of any common as defined by s. 11 of the Inclosure Act, 1845 (*s*), but not in respect of any village or town green (*t*), or any common the whole or any part of which is within the metropolitan police district as defined in 1866.

The Minister of Agriculture and Fisheries is entitled to the repayment of his expenses, including the charges of the officer who holds any inquiry in the matter. Under the Inclosure, etc., Expenses Act, 1868 (*u*), on the confirmation of the award the fee of £10 is payable to the Minister. [714]

Where a local authority is authorised to undertake the management of a common under a Provisional Order made under the Commons Act, 1876 (*a*), it may exercise the following powers (*b*) :

- (a) Undertake, with the sanction of the Minister of Agriculture and Fisheries, to contribute to the maintenance of recreation grounds or of paths or roads, or the doing of any other matter or thing for the benefit of their area in relation to the common ;
- (b) Undertake, with the like sanction, to pay compensation to the commoners for the purpose of securing greater privileges for the benefit of their area ;
- (c) Acquire by gift and hold without licence in mortmain on trust for the benefit of their area any common of which they may be authorised to undertake the management, and any rights in such common ; and also in respect of any such common purchase and hold on such trust with a view to prevent the extinction of the rights of common any saleable rights in common or any tenement of a commoner having annexed thereto rights of common (*b*).

Where a common is thus regulated the powers which highway authorities have under the Highway Acts of digging gravel in waste or common ground (*c*) are limited by requiring the consent of the persons who have the management of the common, or an order of the justices in petty sessions, who may prescribe conditions as to the

(*r*) Commons Act, 1876, s. 14 ; 2 Statutes 593 ; Commons (Expenses) Act, 1878, ss. 2, 3 ; 2 Statutes 601.

(*s*) See *ante*, p. 307, note (*k*).

(*t*) A town green or village green is not subject to be inclosed under the Inclosure Act, 1845 (by s. 15 thereof ; 2 Statutes 447), and so is not within the definition of "common" in s. 37 of the Commons Act, 1876 ; 2 Statutes 600.

(*u*) See Schedule of Fees, S.R. & O., 1916, No. 932.

(*a*) See *ante*, p. 315.

(*b*) Commons Act, 1876, s. 8 ; 2 Statutes 583 ; L.G.A., 1894, s. 26 (2) ; 10 Statutes 795.

(*c*) Highway Act, 1835, s. 51 ; 9 Statutes 72.

mode of working and restitution of the surface (*d*). The justices can refuse to make an order under this provision (*e*). [715]

Metropolitan Commons Acts, 1866 to 1898 (*f*).—These Acts apply to any common the whole or any part of which is within the metropolitan police district as defined at the passing of the Act of 1866.

The commons, within the scope of the Acts, comprise all land subject, at the passing of the Act of 1866, to any right of common and any land subject to inclosure under the Inclosure Act, 1845 (*g*), though by sect. 5 of the Act of 1866 (*h*) the M. of A. were prohibited from entertaining an application for the inclosure of a metropolitan common.

The local authority for a common is (1) where the whole or any part of the common is within the county of London, the L.C.C. (*i*); (2) where the whole or any part of the common is within a municipal borough or urban district, and no part of it is within the county of London, the borough council or U.D.C. (*k*); (3) where neither condition (1) nor condition (2) obtains, the parish council, or the parish meeting if there is no parish council (*m*). [716]

The effect of a scheme under these Acts is very similar to that of a scheme under the Commons Act, 1899 (*n*); but the procedure is more complicated and involves confirmation by Parliament.

A scheme may be made on a memorial presented to the Minister of Agriculture and Fisheries by the lord of the manor, or by any commoners, or by twelve or more ratepayers, inhabitants of the parish, or by the local authority for the purposes of these Acts (*o*).

A draft scheme is prepared by the Minister and printed copies are delivered to the memorialists, the lord of the manor and the local authority, and an abstract of the draft scheme is published and circulated in such manner as the Minister thinks sufficient for giving information to all parties interested. No such scheme may take away or injuriously affect any profitable or beneficial right without making compensation, except by agreement (*p*).

During two months after the publication of the draft, the Minister is required to receive written objections and suggestions and the scheme is then the subject of a local inquiry held by an officer of the Minister.

As soon as may be after the expiration of the two months or upon receipt of the report of the officer holding the inquiry, as the case may be, the Minister, if he thinks fit, proceeds to certify and seal the scheme which is then included in a report to Parliament.

A Provisional Order Bill is introduced by the Minister for the

(*d*) Commons Act, 1876, s. 20; 2 Statutes 595.

(*e*) *Hayes Common Conservators v. Bromley R.D.C.*, [1897] 1 Q. B. 321; 11 Digest 87, 1061.

(*f*) Metropolitan Commons Act, 1866; Metropolitan Commons Amendment Act, 1869; Metropolitan Commons Act, 1878; Metropolitan Commons Act, 1898; 2 Statutes 567, 579, 602, 607.

(*g*) See *ante*, p. 316.

(*h*) 2 Statutes 567.

(*i*) Act of 1860, s. 2 and First Schedule.

(*k*) Act of 1898, s. 1.

(*m*) *Ibid.*, and ss. 6, 19 of L.G.A., 1894; 10 Statutes 778, 790.

(*n*) See *ante*, p. 308.

(*o*) Act of 1866, s. 6; Act of 1869, s. 3.

(*p*) Act of 1866, s. 15.

confirmation of the scheme and petitioners are allowed to appear before a Select Committee and oppose as in the case of a Private Bill (*g*). [717]

The expenses incurred by the Minister in relation to any memorial or scheme must be paid by the memorialists unless a local authority or any other body or persons are willing to defray the same (*r*). [718]

The local authority may, in relation to any common for which it is the local authority, and the L.C.C. may in relation to any metropolitan common contribute towards the expenses of executing any scheme when confirmed by Act of Parliament (*s*). [719]

The scheme provides for the establishment of local management of the common. The managing body need not, necessarily, be the local authority. The scheme also provides for the drainage, levelling and improvement of the common and the making of bye-laws for the prevention of nuisances and the preservation of order (*t*). A form of scheme often adopted provides for the election of conservators by such bodies or persons as the Minister thinks fit and regulates their procedure and the audit of their accounts. It also contains clauses dealing with the appointment of officers, the protection and improvement of the common, the prevention of encroachments and inclosures, and the making of bye-laws similar to clauses 2 to 4, 10 and 11 of the scheme set out on pp. 309—311, *ante*. For forms of schemes, see *Encyclopædia of Forms and Precedents* (2nd ed.), Vol. III., pp. 744—757. [720]

The Act of 1866 requires that every scheme shall state what rights are affected by the scheme and in what manner and to what extent they are affected, and whether the scheme has been in relation thereto consented to by the persons affected or any of them (*u*).

The boundaries of a common are, for the purposes of the scheme, defined on a map, and such definition is conclusive (*a*).

Fees are payable to the Minister of Agriculture (*b*).

A scheme, after confirmation by Parliament, can be amended by an amending scheme made in the same way as the original scheme (*c*). [721]

The provision in the Commons Act, 1876, restricting the powers of highway authorities to dig for gravel in waste or common ground, applies to any metropolitan common regulated under these Acts or any private or local Act (*d*). [722]

PREVENTION OF INCLOSURE

Introductory.—Inclosure of a common may take place under any of the following groups of Acts: (A) The Inclosure Acts, 1845 to 1882 (*e*). (B) Clergy Residences Repair Act, 1776, sect. 21 (*f*); Gifts for

(*g*) Act of 1866, s. 23.

(*r*) *Ibid.*, s. 24.

(*s*) *Ibid.*, s. 25; 2 Statutes 571.

(*t*) *Ibid.*, s. 6.

(*u*) *Ibid.*, s. 14; 2 Statutes 570.

(*a*) *Cook v. Mitcham Common Conservators*, [1901] 1 Ch. 387; 11 Digest 90, 1089.

(*b*) £10 on the memorial for the scheme and £5 on the report of the scheme to Parliament. S.R. & O., 1916, No. 932.

(*c*) Act of 1866, s. 27.

(*d*) See *ante*, pp. 316—317.

(*e*) 2 Statutes, title "Commons and Rights of Common."

(*f*) 6 Statutes 667.

Churches Act, 1811, sect. 2 (*g*); Church Building Act, 1818, sect. 38 (*h*); School Sites Act, 1841, sect. 2 (*i*); Literary and Scientific Institutions Act, 1854, sect. 1 (*k*); various Acts authorising the purchase of land incorporate the clauses as to common lands of the Lands Clauses Consolidation Act, 1845 (*l*). (*C*) It is also still possible to inclose under the Statute of Merton (*m*) and the Statute of Westminster the Second (*n*). (*D*) Various other Acts set out on pp. 320—322, *post*. The Law of Commons Amendment Act, 1893, and the Commons Act, 1899, in effect subject all the above Acts under (*A*), (*B*) and (*C*) to a similar process, but the later Acts contain specific provisions with reference to commons which, though frequently similar to each other, must be treated separately. They are therefore dealt with individually below. [723]

Inclosure Acts and Acts listed under A, B and C above.—The process of inclosure under the Inclosure Acts is restricted by the provisions of the Commons Act, 1876, in the manner described below. Also by sect. 5 of the Metropolitan Commons Act, 1866 (*o*), the Minister may not entertain any application for the inclosure of a metropolitan common. Sect. 22 of, and the First Schedule to, the Commons Act, 1899 (*p*), and the Law of Commons Amendment Act, 1893 (*q*), subject inclosure under all these Acts other than the Inclosure Acts to the consent of the Minister of Agriculture and prescribe that his consent shall be given on the same considerations and that he shall, if necessary, hold the same inquiries as are directed by the Commons Act, 1876, with the exception that a grant or inclosure under any of the above Acts other than the Inclosure Acts, the Statute of Merton and the Statute of Westminster the Second made to or by a Government department does not require such consent. [724]

The Commons Act, 1876 (*r*), lays down in the preamble principles on which the Minister of Agriculture is to act in considering applications for inclosure. These principles include a statement that inclosure in severalty should not be made unless it is for the benefit of the neighbourhood as well as private interests. By sect. 8 notice of any application for inclosure is to be given to the urban sanitary authority of any town or towns within six miles of the common. [725]

By sects. 8 (4) and 26 (2) of the L.G.A., 1894 (*s*), a similar notice has to be given to the council of any parish and to the council of any borough or district in which any part of the common is situate, and by sect. 26 (2) any such council, with the consent of the county council, may aid persons in maintaining rights of common where the extinction of such rights would be prejudicial to their area. Further, they may with the consent of the county council exercise with regard to any common within their area all the powers conferred by sect. 8 of the Commons Act, 1876, on urban sanitary authorities. These powers include the right to make representations to and appear at any inquiry held by the Minister of Agriculture with regard to the inclosure of commons under the Commons Act, 1876 (which, as explained above, for practical purposes includes inclosure under the other Acts mentioned). [726]

(*g*) 6 Statutes 685.

(*i*) 7 Statutes 274.

(*l*) Ss. 99—107; 2 Statutes 1148.

(*n*) *Ibid.*, 426.

(*p*) *Ibid.*, 612, 613.

(*r*) *Ibid.*, 579.

(*h*) *Ibid.*, 708.

(*k*) 10 Statutes 481.

(*m*) 2 Statutes 424.

(*o*) *Ibid.*, 567.

(*q*) *Ibid.*, 606.

(*s*) 10 Statutes 781, 795.

The procedure for inclosure of commons under the Commons Act, 1876, is the same as the procedure for regulation under that Act and has been described above, and it will be seen that the local authority has ample opportunity to present its views.

The general powers with respect to commons under sect. 8 of the Act of 1876 have also been described above (*t*) and may be exercised by the urban sanitary authority of any town within six miles of the common and, with the consent of the county council, by any borough or district council within whose district the common lies (*u*). [727]

The appropriation or acquisition of land forming part of a common is authorised by several statutes subsequent to the Law of Commons Amendment Act, 1893. In the case of all those mentioned below the appropriation or acquisition is subject to restriction. It is sufficient here to mention the general nature of the restriction.

Development and Road Improvement Funds Act, 1909, sect. 19 (*a*).—An order of the Development Commissioners for compulsory acquisition is provisional only until confirmed by Parliament unless an equally advantageous area of land is given in exchange. These restrictions do not apply to the acquisition of common land in a rural district for the construction of a new road or the improvement of an existing road. The acquisition of land on either side of a new road under sect. 11 of the Act is prohibited by sect. 19 if the land forms part of a common. The definition of “common” includes any land subject to be inclosed under the Inclosure Acts, 1845 to 1882, and any town or village green. [728]

Forestry Act, 1919, sect. 7 (*b*).—The restriction on an order of the Development Commissioners for compulsory acquisition is the same as in the Development and Road Improvement Funds Act, 1909, *ante*, but the restriction may be altogether avoided in the case of a common which is not dedicated to the public use or enjoyment or a metropolitan common or a common situate within six miles of any town or a common subject to a scheme of regulation under the Metropolitan Commons Acts or the Inclosure Acts, 1845 to 1882 (*c*), or the Commons Act, 1899, or a private or local Act of Parliament, if the order provides for public access for air, exercise and recreation.

The word “common” is not defined. [729]

Land Settlement (Facilities) Act, 1919, sect. 28 (*d*).—Land which forms part of a metropolitan common or is regulated under the Inclosure Acts, 1845 to 1899 (*e*), or under any local Act or otherwise, or forms part of any town or village green, is protected as follows :

It may not be appropriated for the purposes of the Act by a council for small holdings or allotments, and it may not be acquired by a council or by the Minister of Agriculture except under an order for compulsory purchase which is not to have effect until it is confirmed

(*t*) *Ante*, p. 316.

(*u*) L.G.A., 1894, s. 26 ; 10 Statutes 795.

(*a*) 9 Statutes 216.

(*b*) 3 Statutes 448.

(*c*) This includes the Commons Act, 1876, by the Short Titles Act, 1896, Second Schedule ; 18 Statutes 1159.

(*d*) 1 Statutes 298.

(*e*) This includes the Commons Acts, 1876 and 1899. See *supra*, note (*c*), and s. 24 of the Act of 1899 ; 2 Statutes 612.

by Parliament. Even so the Minister in giving consent to an appropriation and in confirming an order for compulsory purchase is to have regard to the same considerations and to hold the same inquiries as under the Commons Act, 1876, and such a consent is to be laid before Parliament. [730]

Housing Act, 1925, sect. 103 (f).—An order under the Act authorising the acquisition or appropriation to any other purpose of land forming part of a common must provide for the giving of equally advantageous land in exchange, or else is provisional until it is confirmed by Parliament. The definition of “common” is the same as in the Development and Road Improvement Funds Act, 1909, *ante*. [731]

P.H.A., 1925, sect. 69 (g).—The powers to acquire and lay out land for games does not extend to land forming part of a common. The definition of common is the same as in the Development and Road Improvement Funds Act, 1909, *ante*. [732]

Poor Law Act, 1930, sect. 111 (h).—Inclosures of waste or common land (terms which are not defined) under this section may be made with the consent of the lord of the manor and the majority in value of the persons having rights of common, but are limited to fifty acres, and the inclosure can only be made with the consent of the Minister of Agriculture. [733]

Public Works Facilities Act, 1930, sect. 2 (i).—A compulsory purchase order under this Act is subject to the same restrictions as to commons as if sect. 103 of the Housing Act, 1925, applied to it. [734]

Agricultural Land (Utilisation) Act, 1931, sect. 3 (k).—The power of the Minister of Agriculture to acquire land compulsorily for the purpose of reconditioning it does not extend to land which forms part of any common or any town or village green. The term “common” is not defined. [735]

Town and Country Planning Act, 1932, Third Schedule, Part II., para. 4 (l).—A scheme or order made in connection with a scheme which authorises the acquisition or appropriation of land forming part of any common, unless it provides in exchange an area of equally advantageous land, does not have effect until it has been confirmed by Parliament. “Common” is defined as in the Development and Road Improvement Funds Act, 1909, *ante*. [736]

L.G.A., 1933, sect. 174 (m).—Part VII. of the Act, which contains provisions for the acquisition of and dealings in land by local authorities, provides by sect. 161 a code for the compulsory purchase of land by a local authority other than a parish council where any public general Act passed after June 1, 1934, authorises the purchase of land compulsorily by means of an order made by the authority and confirmed by the Minister of Health. Sect. 168, in the same Part of the Act, provides for the compulsory purchase of land by a county council on behalf of a parish council under an order of the county council confirmed by the Minister. Sect. 174 provides that a compulsory purchase

(f) 13 Statutes 1059.

(h) 12 Statutes 1028.

(k) 24 Statutes 52.

(m) 26 Statutes 401.

(g) *Ibid.*, 1146.

(i) 23 Statutes 773.

(l) 25 Statutes 532.

order made under Part VII. of the Act authorising the acquisition of land forming part of a common shall not have effect until it is confirmed by Parliament unless it provides for giving in exchange an equally advantageous area of land. The Minister of Health must certify that the land to be given in exchange is equally advantageous both to the persons entitled to commonable or other rights and to the public. He is to give this certificate after consultation with the Minister of Agriculture and before giving it is to give public notice of the proposed exchange and to give opportunities to all persons interested to make representations and objections and, if necessary, to hold a local inquiry. "Common" is defined in the same way as in the Development and Road Improvement Funds Act, 1909, *ante*. [737]

COMPENSATION FOR LOSS OF OFFICE

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INTRODUCTION

Preliminary Observations.—For many years it has been the practice of the legislature to make provision for the payment of compensation to officers of local authorities who lose office or emoluments by reason of an alteration of area or a transfer of functions from one local authority to another. For instance, the Poor Law Board were empowered to dissolve poor law unions and to transfer parishes from one union to another. In order to avoid the hardship which might be caused to officers through such alterations, the board were empowered to award

compensation to officers who, by such a dissolution, were deprived of office (*a*). By the L.G. Acts, 1888 and 1894, provision was made for the alteration of counties, boroughs, districts and parishes, and these Acts allowed the payment of compensation to officers who suffered a loss of income by reason of the alterations (*b*). [738]

The next occasion on which large numbers of officers were affected by legislation was on the abolition of school boards by the Education Act, 1902, and their supersession by county councils and those borough and urban district councils which became local education authorities. Provision was made for the award of compensation to officers who suffered direct pecuniary loss by applying sect. 120 of the L.G.A., 1888 (*c*).

Officers who lost office or suffered financial loss through the transfer of the duty of making and collecting rates and other functions to borough and district councils were allowed to claim compensation (*d*). Again the code applied was sect. 120 of the L.G.A., 1888, but by the Sixth Schedule to the R. & V.A. of 1925 (*e*) several modifications in favour of the officer were made, and the M. of H. was to decide appeals instead of the Treasury.

The next important change in the system of local government was made by the L.G.A., 1929, which abolished boards of guardians and transferred their powers and duties and officers to county councils and county borough councils, and also made the county council the road authority for the rural districts in the county. Road officers of rural district councils were transferred to county councils. Provision was made for the award of compensation to poor law officers and road officers by sect. 123 and the Eighth Schedule to the Act (*f*). This code is of special interest, because it is self-contained, and does not take the form of an application and adaptation of sect. 120 of the L.G.A., 1888. [739]

The latest code of compensation is that contained in sect. 150 and the Fourth Schedule to the L.G.A., 1933 (*g*), and applies to any existing officer who suffers pecuniary loss by determination of his appointment or diminution of emoluments by virtue of a scheme or order made under Part VI. of that Act, or of anything done in pursuance or in consequence of the provisions of such a scheme or order. The scheme in question would be a scheme under sect. 132 made whenever a new municipal borough is created by charter, and the orders referred to are orders for the alteration of various local government areas made under sects. 140—143 or 146 of the Act, excluding, however, orders giving effect to the first county review of such areas.

By each enactment dealing with the compensation of officers, provision has been made for the decision of appeals, either by the Treasury as under the Act of 1888 or by the M. of H. as under the more recent statutes. [740]

(*a*) Poor Law Amendment Act, 1867, s. 20. Repealed by the Poor Law Act, 1927.

(*b*) See s. 120 of the L.G.A., 1888; 10 Statutes 767; and s. 81 (7) of the L.G.A., 1894; *ibid.*, 824.

(*c*) See Education Act, 1902, para. (21) of the Second Schedule. Repealed by the Education Act, 1921, and replaced by para. (7) of the Second Schedule to that Act; 7 Statutes 219.

(*d*) R. & V.A., 1925, s. 49; 14 Statutes 674.

(*e*) 14 Statutes 700.

(*f*) 10 Statutes 962, 987.

(*g*) 26 Statutes 388, 504.

Method of Treatment.—In this title, the following codes are dealt with :

The L.G.A., 1888 ;
The L.G.A., 1933 ;
The R. & V.A., 1925 ;
The L.G.A., 1929 ;
The Electricity (Supply) Acts, 1919, 1922, 1926 and 1933 ;
The Road Traffic Act, 1930 ; and
The Town and Country Planning Act, 1932.

The code of 1888 is still material, not only because it is the foundation of more recent codes, but because it has been applied by comparatively recent orders made under the L.G.A., 1888, for the alteration of areas.

Clauses applying and adapting one of these general codes may also be found in local Acts for the extension of boroughs.

In future, most of the local government officers entitled to claim compensation will come under either the L.G.A., 1929, or the L.G.A., 1933, according to which of these codes is applied to him by order. In addition to the code of 1888, the provisions of these statutes will therefore be considered in detail. Claims to compensation may still arise under the R. & V.A., 1925, but the importance of the other general code, to which reference has been made, has passed away.

It is proposed briefly to consider first the code of 1888, and then the codes of 1933. Later the codes of 1925 and 1929 and the provisions of some other recent statutes providing compensation to officers will be referred to. [741]

THE LOCAL GOVERNMENT ACT, 1888

Sect. 120 of this Act (*h*) provided for the payment of compensation to any officer who by virtue of the Act, or anything done in pursuance or in consequence of it, suffered direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, regard being had to the conditions upon which his appointment was made, the nature of his office or employment, the duration of his service, to any additional emoluments which he acquired, or which he might have acquired if he had not refused to accept any office offered to him by any council or other body acting under the Act, and to all the other circumstances of the case. As the displacement of officers mainly arose from the establishment of county councils by the Act, the compensation was to be awarded and paid by the county councils.

It was provided that the compensation should not exceed the amount which would have been payable to a person on abolition of office under the Acts and rules relating to H.M. Civil Service which were in operation on August 13, 1888.

Every person who claimed to be entitled to compensation was required to deliver to the county council a claim setting forth the whole amount received and expended by him or his predecessors in office in every year during the period of five years next before the passing of the Act, accompanied by a statutory declaration that the claim was a true statement according to the best of the applicant's knowledge, information and belief.

The county council were required to consider the claim and assess the amount of compensation in the form of an annuity. A claimant

aggrieved by a refusal of compensation or the amount assessed might appeal to the Treasury, whose determination of the compensation was final.

A claimant could be required to attend a meeting of the county council and answer upon oath any questions which might be asked by any member in connection with his claim. He could also be asked to produce any necessary books, papers or documents. The compensation finally settled was constituted a specialty debt due to him from the county council.

A transferred officer is not entitled to compensation if his appointment is determined owing to a change of policy which was not in consequence of the Act.

It must be a question of fact in each case as to whether the pecuniary loss is suffered by virtue of the Act or something done in pursuance or in consequence of the Act (*hh*).

The term "emoluments" may include the profit properly made by a person in receipt of a travelling allowance (*hhh*). In some circumstances it may also apply to grants made to officers for special duties and extra work (*hhhh*). [742]

Basis and Scale of Compensation.—The award of a compensation allowance to an established civil servant upon the abolition of an office to which he was appointed before September 20, 1909, is regulated by the Superannuation Act, 1859 (*i*), and it was the practice of the Treasury to award an annual allowance calculated at the same number of sixtieths of the officer's emoluments as he had served completed years.

The usual basis on which the loss was calculated was the average amount received by the officer during the five years next before the date of the abolition of the office.

At the time of the passing of the L.G.A., 1888, it was the practice of the Treasury to award a special addition on account of abolition of office not exceeding the following scale :

Actual Service.						Addition.
20 years or upwards	—	—	—	—	—	10/60ths
15 years and less than 20	—	—	—	—	—	7/60ths
10 " "	15	—	—	—	—	5/60ths
5 " "	10	—	—	—	—	3/60ths
Under 5 years	—	—	—	—	—	1/60th

Where, however, the officer would, owing to his age, have been entitled shortly after the date of his compulsory retirement to a pension, it was the practice of the Treasury to add such less number of years as appeared to them reasonable. In such a case the local authority should not allow the full addition of years.

These provisions are applicable to the case of a local government officer whose claim to compensation arises under a statute or statutory order which expressly provides for the application of the Acts and rules relating to H.M. Civil Service in operation in 1888.

By sect. 6 of the Superannuation Act, 1909 (*k*), the basis on which

(*hh*) *R. v. Westport U.D.C.*, [1903] 2 I. R. 179 ; *R. v. L.C.C.*, *Ex parte Scriven* (1907), 23 T. L. R. 493 ; 38 Digest 140, 1042.

(*hhh*) *R. v. Postmaster-General* (1878), 3 Q. B. D. 428 ; 38 Digest 140, 1047 ; *Livingstone v. Westminster Corpn.*, [1904] 2 K. B. 109 ; 38 Digest 141, 1048.

(*hhhh*) *R. v. Lyon, Ex parte Harrison*, [1921] 1 K. B. 203 ; 33 Digest 248, 1688 ; *Salford Guardians v. Dewhurst*, [1926] A. C. 619 ; 37 Digest 215, 105.

(*i*) 16 Statutes 179.

(*k*) *Ibid.*, 743.

compensation for abolition of office was allowed to civil servants was changed, the special addition of years on account of abolition of office was only to be made in favour of persons who were in 1909 members of the civil service, and the allowance was to be calculated at one-eightieth, instead of one-sixtieth, for each year of service. It will be seen, however, that in Acts passed after 1909, providing for compensation to local government officers, the older basis of compensation has been preserved either by a statutory direction that the Acts and rules in force in 1888 should continue to apply, or in the L.G.A., 1933, by a provision that the compensation should be one-sixtieth of the loss for each year of service, with a special addition of years on the scale mentioned, *supra* (l). [743]

Suspension of Compensation.—Sect. 120 (7) of the L.G.A., 1888 (m), provided that if a recipient of compensation should be appointed to any office under the same or any other county council he should not receive any greater amount of his compensation than with the emoluments of the said office is equal to those for which compensation was granted to him, and that if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, the compensation should be suspended while he held that office. The sub-section also extended to any recipient of compensation who by virtue of the Act of 1888, or anything done in pursuance or in consequence of it, received any increase of emoluments of the office held by him. A strict application of this provision has had unfortunate results. Thus it might be said that an ordinary increment of salary was within it, with the result that a corresponding reduction of the compensation allowance must be made and the benefit of the increment neutralised. [744]

THE LOCAL GOVERNMENT ACT, 1933

Persons Entitled.—The new code will be found in sect. 150 and the Fourth Schedule to the Act (n), but before considering the scheme of compensation it is advisable to point out that these provisions do not apply automatically, but are to be applied by any scheme or order made under Part VI. of the Act. These comprise the schemes or orders described on p. 323, *ante*.

Any such scheme or order must contain provisions as to the transfer of existing officers affected by the scheme or order, for the protection of their interests and for the payment of compensation to such officers as are adversely affected. It will be necessary, therefore, to consider the particular provisions in each scheme or order to ascertain the rights of officers thereunder, but no doubt these schemes or orders will be framed in general on similar lines. A scheme or order must, of course, indicate the council by whom compensation is to be awarded and paid. [745]

Right to Compensation.—Compensation is payable to any existing officer who by virtue of the scheme or order, or of anything done in pursuance of or in consequence of its provisions, suffers any direct

(l) See s. 136 of the Morley Corp'n. Act, 1913; 3 & 4 Geo. 5, c. cxii., for an example of a statutory direction that the Acts and rules in force in 1888 should continue to apply. Such a direction was known, from this Act, as "the Morley clause." See also L.G.A., 1933, Fourth Schedule, paras. 4—6; 26 Statutes 504.

(m) 10 Statutes 768.

(n) 26 Statutes 388, 504.

pecuniary loss by reason of the determination of his appointment or the diminution of his emoluments. But compensation is not to be payable if provision is made by any other enactment or statutory order for the payment of compensation to the officer.

Any scheme or order under Part VI. of the Act must contain provisions for the protection of the interests of "transferred officers," but it should be noted that compensation is not confined to "transferred officers." Although, where a council is abolished, "transferred officers" would mainly be affected, an existing officer of another council might suffer pecuniary loss consequent on a transfer of part of the area for which the officer acted to the district of another local authority. Where an officer is paid by fees, there is a special risk of the transfer involving him in loss.

The term "officer" as used in the Act includes a servant (*o*), *i.e.* a person employed by a local authority whose wages are paid weekly. But, on the other hand, it is probable that the scheme or order would make it clear that officers appointed and paid by a local authority are alone eligible for compensation, and possibly voluntary school teachers in addition. Thus it has never been the practice to award compensation to members of a staff of clerks employed and paid by a town clerk or the clerk of a district council out of his salary. Moreover, a solicitor who had been retained on various occasions to act for the board of guardians and district council, but had not been appointed as their solicitor, is not entitled to compensation as an officer (*p*).

An existing officer who at any time within five years after the date on which the scheme or order comes into operation relinquishes office owing to his having been required to perform duties which are not analogous to or which are an unreasonable addition to those which he was required to perform immediately before that date is to be deemed to have suffered a direct pecuniary loss in consequence of the scheme or order, unless the contrary is shown (*q*). In such a case the claim to compensation cannot arise until the officer has relinquished his office. If, therefore, after resigning and claiming compensation the claim is disallowed by the council and their decision is upheld by the M. of H. on appeal, the officer has no remedy.

Similarly, an existing officer whose appointment is determined or whose emoluments are reduced within five years after the date on which the scheme or order comes into operation, because his services are not required or his duties diminished (no misconduct being established), is to be deemed, unless the contrary is shown, to have suffered loss in consequence of the scheme or order (*r*).

The onus is on the local authority to prove that the loss was *not* in consequence of the scheme or order. If the dismissal or reduction of emoluments occurs after the completion of the five-year period, the onus is on the officer to show that it resulted from the scheme or order.

An existing officer who is required to perform duties which are not analogous to or which are an unreasonable addition to those which he was previously required to perform has no remedy but to relinquish office and claim compensation. He cannot sue the council for extra remuneration for the additional work, unless an express or implied contract to pay extra remuneration can be shown to exist.

(*o*) L.G.A., 1933, s. 305 ; 26 Statutes 467.

(*p*) *Re Carpenter and the Bristol Corpn.*, [1907] 2 K. B. 617 ; 33 Digest 15, 46.

(*q*) L.G.A., 1933, s. 150 (2) ; 26 Statutes 388.

(*r*) *Ibid.*, s. 150 (3).

The expression "officer" includes a superintendent registrar, registrar of births and deaths, registrar of marriages and a teacher in a voluntary elementary school maintained by a local education authority (s). [746]

Procedure in claiming Compensation.—This is set out in the Fourth Schedule to the L.G.A., 1933.

An officer who considers himself entitled to compensation must submit a claim to the awarding council, supported by a statutory declaration (t).

The claimant may be required to attend any meeting of the council or a committee thereof, to answer questions on oath and to produce such books and documents as may relate to his claim. It is competent to any member of the council to require the officer's attendance by means of a notice sent through the clerk of the council (u). This is an unusual provision, as in general a local authority or committee can only act or give instructions in accordance with the views of the majority of the members present at a meeting.

The council must forthwith consider the claim and inform the claimant of their decision. If the claim is not determined within six months after its delivery, the claimant may apply to the M. of H. who may direct the council to arrive at a decision within a further specified period of not less than one month (a). [747]

Assessment of Compensation. General Considerations.—The council must have regard to the conditions upon which the officer's appointment was made, the nature of his office and all the other circumstances of the case (b).

Even although an officer may be eligible for compensation for loss of office or emoluments, it does not follow that compensation will be awarded. Regard must be had to any increase of emoluments enjoyed by the officer at the material date which he has obtained by virtue of the scheme or order, or of anything done in pursuance or in consequence of it, and the emoluments of any office or other public appointment which he would have obtained on or after the material date if he had accepted an offer made to him (c). The material date means the date on which the determination of office or diminution of emoluments takes effect (d). [748]

Calculation of Compensation for Loss of Office.—The basis on which a compensation allowance is to be awarded in respect of the determination of a whole-time office is prescribed by para. 4 of the Fourth Schedule to the Act of 1933. The amount of the allowance is calculated on the annual pecuniary loss and the years of service of the officer in any office after he attained the age of eighteen years (e). The compensation allowance must not exceed one-sixtieth of the annual pecuniary loss for every year of the officer's service, with a special addition of sixtieths in accordance with the following scale :

In the case of service of 20 years or upwards	—	not exceeding 10/60ths
" " 15 years and less than 20	"	7/60ths
" " 10 " "	15	5/60ths
" " 5 " "	10	3/60ths
" " less than 5 years	—	1/60th

(s) L.G.A., 1933, s. 150 (5); 26 Statutes 388.

(t) *Ibid.*, Fourth Schedule, para. 1 (1); *ibid.* 504.

(u) *Ibid.*, para. 1 (5).

(b) *Ibid.*, para. 2.

(d) *Ibid.*, para. 12.

(a) *Ibid.*, para. 1 (3), (4).

(c) *Ibid.*, para. 4 (3); 26 Statutes 505.

(e) *Ibid.*, definition of "service" and "office."

The Act does not make these additions of years compulsory. In deciding appeals under the earlier Acts it has been the practice of the M. of H. in normal circumstances to add years in accordance with this scale, which follows the practice of the Treasury (see *ante*, p. 325). It would appear, therefore, that unless there are unusual circumstances the Minister would adopt a similar course in deciding an appeal under the Act of 1933, and will be guided normally by the periods above mentioned.

A further addition of years to the actual period of service, not exceeding ten-sixtieths, may be made if the officer was appointed as a specially qualified person (*e.g.* a medical officer or engineer), or where the officer, before his appointment, had been employed as a deputy, assistant or clerk by a permanent officer for the purpose of the discharge of the latter's official duties (*f*). This special addition is expressly stated to be in the discretion of the council and their decision on this point is, therefore, not subject to review on appeal. The object of the provision is to allow a professional man, appointed at a later age than the normal age for local government officers, the benefit of added years of service, and also the officer whose earlier years had been passed as an employee of a permanent officer.

But an overriding maximum is imposed by para. 4 (1) of the Fourth Schedule. In no event can the compensation allowed exceed two-thirds (*i.e.* forty-sixtieths) of the annual pecuniary loss.

The council have a discretion as to whether in making this calculation the emoluments taken should be those received by the officer immediately before the material date or the average amount of those emoluments during the period of five years next before the material date, or such shorter period as may be reasonable in the circumstances (*g*). In appeals determined by the Minister in recent years, under Acts passed prior to the Act of 1933, it has been the general practice of the Minister to take a five years' average, but it is quite clear that a discretion may be properly exercised in deciding a claim under the Act of 1933.

Any previous period of part-time service given by an officer to whom compensation for the loss of a whole-time office or offices is awarded is to be treated as whole-time service for a proportionately reduced period (*h*). Thus ten years' service in an office to which the officer gave half his time would be counted as five years' service.

In the case of an officer to whom compensation is being awarded for the determination of a part-time office, the compensation may be reduced by one-quarter, but this does not apply where the officer holds two or more offices and devotes the whole of his time to those appointments (*i*). The council are not bound to reduce the compensation by one-quarter but may fix the reduction at some other reasonable amount, regard being had to the circumstances. War service within the prescribed conditions must be taken into account in reckoning the service on which compensation is based (*k*). [749]

Calculation of Compensation for Diminution of Emoluments.—Where an officer has not lost his office but suffers a diminution of emoluments the compensation is to be calculated on the same basis as for a loss of office, but must not exceed that proportion of the

(*f*) L.G.A., 1933, Fourth Schedule, para. 4 (1) (iii.); 26 Statutes 505.

(*g*) *Ibid.*, para. 4 (2); *ibid.*

(*i*) *Ibid.*, para. 5.

(*h*) *Ibid.*, para. 4 (4).

(*k*) *Ibid.*, para. 7.

compensation which could have been awarded if his office had been determined, which bears the same proportion as the amount by which the emoluments are diminished bears to their amount before diminution (*l*). [750]

Award of Lump Sum.—Compensation may be awarded either by way of an annual sum or by way of a lump sum representing the capital

Age next birthday.	Number of years' purchase.	Present value of the annuity of £100.	Age next birthday.	Number of years' purchase.	Present value of the annuity of £100.
		£ s. d.			£ s. d.
21	15.317	1,531 14 0	51	11.271	1,127 2 0
22	15.225	1,522 10 0	52	11.065	1,106 10 0
23	15.133	1,513 6 0	53	10.854	1,085 8 0
24	15.040	1,504 0 0	54	10.638	1,063 16 0
25	14.946	1,494 12 0	55	10.419	1,041 18 0
26	14.851	1,485 2 0	56	10.195	1,019 10 0
27	14.754	1,475 8 0	57	9.968	996 16 0
28	14.655	1,465 10 0	58	9.737	973 14 0
29	14.554	1,455 8 0	59	9.503	950 6 0
30	14.452	1,445 4 0	60	9.267	926 14 0
31	14.349	1,434 18 0	61	9.028	902 16 0
32	14.242	1,424 4 0	62	8.787	878 14 0
33	14.129	1,412 18 0	63	8.544	854 8 0
34	14.018	1,401 6 0	64	8.299	829 18 0
35	13.892	1,389 4 0	65	8.054	805 8 0
36	13.767	1,376 14 0	66	7.808	780 16 0
37	13.635	1,363 10 0	67	7.561	756 2 0
38	13.500	1,350 0 0	68	7.316	731 12 0
39	13.359	1,335 18 0	69	7.071	707 2 0
40	13.213	1,321 6 0	70	6.826	682 12 0
41	13.061	1,306 2 0	71	6.584	658 8 0
42	12.906	1,290 12 0	72	6.343	634 6 0
43	12.746	1,274 12 0	73	6.105	610 10 0
44	12.579	1,257 18 0	74	5.870	587 0 0
45	12.406	1,240 12 0	75	5.638	563 16 0
46	12.231	1,223 2 0	76	5.409	540 18 0
47	12.049	1,204 18 0	77	5.185	518 10 0
48	11.862	1,186 4 0	78	4.965	496 10 0
49	11.670	1,167 0 0	79	4.749	474 18 0
50	11.473	1,147 6 0	80	4.538	453 16 0

[751]

value of an annual sum (*m*). The award of a lump sum has the disadvantage that the provision for the suspension of the compensation on a new appointment being obtained by the recipient of the compensation (*n*) becomes inapplicable. In the past it has been the practice to award a lump sum only where the annuity would have been less than £12.

In the past a general power to borrow lump sums paid by a council as compensation for loss of office did not exist, but the L.G.A.,

(*l*) L.G.A., 1933, Fourth Schedule, para. 6; 26 Statutes 506.

(*m*) *Ibid.*, para. 8.

(*n*) See *post*, p. 331.

1933 (o), allows a local authority to borrow, with the consent of the M. of H. (p), lump sums payable by them as compensation to existing officers under a scheme or order made under Part VI. of the Act.

The period for the repayment of any money so borrowed must be approved by the Minister under sect. 198 of the Act and cannot exceed sixty years, but it is probable that a much shorter period would be fixed.

No rules for the calculation of a lump sum by way of compensation are prescribed by the Act, and it would appear that the council may agree the amount with the officer concerned. The Treasury on September 9, 1913, and December 20, 1932 (q), made regulations as to the basis on which the pensions of civil servants might be commuted. These regulations do not govern the award of lump sums as compensation to local government officers, but might reasonably be followed as a general guide. The regulations do not apply to female officers. A still later table for the commutation of war pensions will be found in the Commutation (Ministry of Pensions) Amendment Regulations, 1933 (r).

In connection with the question as to the proper basis for the commutation of a compensation allowance under the R. & V.A., 1925, the M. of H. expressed the view that the table set out on p. 330, *ante*, which was made by the Treasury under the Pensions Commutation Acts, 1871—2, might properly be used for males. The table of some recognised life assurance company was suggested for females. [752]

Appeals.—A claimant to compensation may appeal to the M. of H. if he is aggrieved on any of the following grounds :

1. That the council have not informed him of their decision upon his claim within the time required by any direction of the Minister ; or
2. That the council have refused to grant any compensation ; or
3. That the claimant disagrees with the amount of compensation assessed (s).

The appeal to the Minister must be made within three months after the failure of the council to decide the claim or after the receipt of notice of the council's decision, as the case may be (s).

Under earlier Acts, the most usual ground of appeal has been that the council have failed to make a special addition of years. It has been the general practice of the M. of H. in deciding these appeals in recent years to allow the full addition of years in accordance with the Treasury scale printed on p. 325, *ante*, unless the officer is approaching the age at which he could be compulsorily retired on superannuation or there are some special circumstances which render the full addition unjustifiable. [753]

Suspension of Compensation.—If a person receiving compensation obtains any other office or public appointment, or receives by virtue of the scheme or order made under Part VI. of the Act, or of anything done in pursuance or in consequence of it, an increase of the emoluments

(o) S. 150 (6) ; 26 Statutes 389.

(p) See s. 195 (e) of the Act.

(q) S.R. & O., 1913, No. 972, and 1932, No. 1020.

(r) S.R. & O., 1933, No. 723.

(s) L.G.A., 1933, Fourth Schedule, para. 8 ; 26 Statutes 506.

which were enjoyed by him on the date on which the compensation was assessed, his compensation is suspended or the amount thereof is reduced, so that he may not receive any greater sum by way of compensation in respect of the office for which it was awarded than would make up the amount, if any, by which the emoluments which he is receiving fall short of the emoluments of the office in respect of which the compensation was granted (*t*).

The expression "office" means any place, situation or employment, and includes the offices of superintendent registrar or registrar of births and deaths or marriages, and also the office of teacher in a voluntary elementary school (*u*). "Public appointment" means any employment the emoluments of which are payable out of public funds, and thus covers government appointments as well as local government appointments and employment by any public board.

There is a special proviso to para. 10 enabling the Minister to modify the operation of this provision as respects persons who hold two or more offices at the date as at which the compensation was assessed, or who have been awarded compensation in respect of two or more offices.

These provisions of the L.G.A., 1933, should be compared with those in sect. 120 (7) of the L.G.A., 1888, referred to on p. 326, *ante*. Where the recipient is not appointed to a fresh office, but an increase of emoluments is alone received, compensation under the L.G.A., 1933, would only be reduced or suspended if the increase of emoluments accrued by virtue of the scheme or order, or anything done in pursuance or in consequence of it. If, for instance, the claimant received an increase of emoluments in respect of an appointment under the R. & V.A., 1925, not attributable to the scheme or order, compensation under the Act of 1933 would not be affected. [754]

Compensation and Superannuation.—Para. 10 (2) of the Fourth Schedule to the L.G.A., 1933, contains a new provision dealing with a recipient of compensation who later becomes entitled to a superannuation allowance in respect of an office or public appointment, which he had accepted after the date on which the determination of his original appointment or the diminution of his emoluments took effect. If in calculating the amount of the superannuation allowance account is taken of a period of service in respect of which compensation is payable, then if the compensation does not exceed that part of the superannuation allowance which is attributable solely to that service, the compensation ceases to be payable, but if it exceeds the part of the superannuation allowance already referred to the compensation is reduced by an amount equal to that part of the allowance (*a*). [755]

Return of Superannuation Contributions.—If a recipient of a compensation allowance has contributed to a superannuation allowance under the Local Government and other Officers' Superannuation Act, 1922, but has not received a superannuation allowance, he will be entitled to a return of his contributions, together with compound interest thereon at the rate of 3 per cent. per annum (*b*). [756]

(*t*) L.G.A., 1933, Fourth Schedule, para. 10; 26 Statutes 506.

(*u*) *Ibid.*, para. 12; *ibid.*, 507.

(*a*) *Ibid.*, para. 10; *ibid.*, 506.

(*b*) See the Act of 1922, s. 10; 10 Statutes 867.

Forms.—The Minister may prescribe any form of notice or other document in connection with a claim for compensation (c). [757]

THE RATING AND VALUATION ACT, 1925

It is not considered necessary to set out in detail the provisions for compensation to officers in the R. & V.A., 1925, as fresh claims under this Act will now be very exceptional.

Although seven years have elapsed since the Act came into operation and the provisions of sects. 48 (9) and 49 (2) (b) of the Act (d) for the protection of transferred officers have expired, an officer may still obtain compensation if he is able to establish that he has suffered a direct pecuniary loss by virtue of the Act. In assessing compensation, sect. 49 of the Act and the Sixth Schedule (e), by which s. 120 of the L.G.A., 1888, is applied with modifications, must be observed. For the decision of appeals, the M. of H. is substituted for the Treasury (f), and the Acts and rules relating to H.M. Civil Service, as in force in 1888, were applied (g).

No officer may receive a compensation allowance for pecuniary loss and a superannuation or retiring allowance in respect of the same period of service and the same pecuniary loss (h).

If a person receiving compensation under this Act is appointed to any office under any local authority, his compensation is suspended or reduced so that he may not receive a greater total sum in respect of compensation or remuneration than the emoluments for which compensation was granted (i). Similarly the compensation allowance is reduced if *by virtue of that Act* or of anything done in pursuance of or in consequence of the Act, he received any increase of emoluments of the office held by him. It should be noticed that the compensation allowance is not reduced if the officer holds also another appointment, such as that of a clerk of an R.D.C., and receives increased emoluments for that appointment by reason of additional duties imposed on him by some Act other than the R. & V.A., 1925. [758]

THE LOCAL GOVERNMENT ACT, 1929

Compensation was payable under sect. 123 of the L.G.A., 1929, to any person who :

1. was on November 12, 1928, an officer of an authority or committee from which functions were transferred by this Act ; or
2. was a superintendent registrar, registrar of births and deaths or marriages on November 12, 1928 ;

and who on April 1, 1930, still held the office and suffered any direct pecuniary loss by virtue of the Act or of anything done in pursuance or in consequence of it. But officers entitled to compensation by virtue of any other enactment were excluded from compensation under the Act of 1929.

The main classes of officers affected by the Act of 1929 were poor law officers transferred from boards of guardians to councils of counties

(c) L.G.A., 1932, Fourth Schedule, para. 11 ; 26 Statutes 507.

(d) 14 Statutes 674, 675.

(e) *Ibid.*, 674, 700.

(f) R. & V.A., 1925, Sixth Schedule, para. 1 (a) ; 14 Statutes 700.

(g) *Ibid.*, para. 1 (d).

(h) *Ibid.*, para. 8.

(i) L.G.A., 1888, s. 120 (7) ; 10 Statutes 768 ; and R. & V.A., 1925, Sixth Schedule, para. 1 (e) ; 14 Statutes 700.

and county boroughs and road officers transferred from rural district councils to county councils.

The conditions for the payment of compensation are set out in sect. 123 and the Eighth Schedule to the Act (*k*).

The provisions are generally similar to those which were subsequently enacted in the L.G.A., 1933. The points which have been noted in considering the Act of 1933 are therefore relevant to claims made under the Act of 1929.

Any appeal is decided by the M. of H. (*l*) and the Acts and rules relating to H.M. Civil Service which were in operation in 1888 were applied (*m*).

The provision in para. 14 of the Eighth Schedule to the Act of 1929 (*n*) with regard to the suspension or reduction of a compensation allowance is wider than that in sect. 120 (7) of the L.G.A., 1888, as modified by the Sixth Schedule to the R. & V.A., 1925 (*o*), because it extends to the appointment of the recipient of a compensation allowance to any office under the Crown or any public authority, as well as to any office under a local authority. The Act does not give any definition of "public authority," but water, gas or electricity boards and other such bodies as are mentioned in the definition of "public body" in sect. 305 of the L.G.A., 1933, would no doubt be held to be public authorities. An appointment as a superintendent registrar, or registrar of births and deaths or marriages, or as a teacher in a voluntary elementary school would also cause a reduction or suspension of the compensation allowance (*p*). [759]

THE ELECTRICITY (SUPPLY) ACTS, 1919, 1922, 1926 AND 1933

Sect. 16 of the Electricity (Supply) Act, 1919 (*q*), provided for the payment of compensation to an officer or servant regularly employed in or about a transferred electricity undertaking or any authorised undertaking who had suffered loss of employment, or diminution of salary, wages or emoluments, or who had relinquished his employment in consequence of being required to perform duties not analogous to or forming an unreasonable addition to those previously performed. The section also allows compensation to any such officer or servant who has been placed in any worse position as to the conditions of his service (including tenure of office, pension, etc.).

The compensation is awarded by a referee or board of referees appointed by the Minister of Labour, and is payable by the body to whom the electricity undertaking is transferred, or the electricity undertakers who are parties to the agreement or arrangement.

Where the officer is employed on an annual salary, the compensation is to be based on, but is not to exceed, the amount which would have been payable in 1888, on abolition of office under the Acts and rules relating to H.M. Civil Service. Past service under any authorised undertakers is to be counted and war service on leave from authorised undertakers is also to be reckoned as service.

The section was amended by sect. 21 of the Electricity (Supply) Act,

(*k*) 10 Statutes 962, 987.

(*l*) L.G.A., 1929, Eighth Schedule, para. 13; 10 Statutes 989.

(*m*) *Ibid.*, para. 1; *ibid.*, 987.

(*n*) *Ibid.*, 989.

(*o*) See *ante*, p. 333.

(*p*) See L.G.A., 1929, Eighth Schedule, para. 16 (b), (c); 10 Statutes 989.

(*q*) 7 Statutes 764.

1922 (*r*), and by sect. 1 of the Electricity (Supply) Act, 1928 (*s*). It was also applied to an officer or servant of authorised electricity undertakers who is affected by the permanent or temporary closing of a generating station, or by restrictions imposed by the Central Electricity Board on the working or use of a generating station, or its acquisition, or the acquisition of a main transmission line under or in consequence of the Electricity (Supply) Act, 1926 (*t*). As so applied, sect. 16 of the Act of 1919 was re-enacted as set out in the Fourth Schedule to the Act of 1926 (*u*).

An amending order constituting a joint electricity authority in lieu of another body may also apply sect. 16 of the Act of 1919, as amended by sect. 21 of the Act of 1922 (*a*).

Originally sect. 16 of the Act of 1919 applied where a scheme for the improvement of the supply of electricity had come into operation, or an agreement or arrangement for mutual assistance had been made by authorised undertakers. By sect. 1 of the Electricity (Supply) Act, 1933 (*b*), the passage just mentioned is cancelled and sect. 16 of the Act of 1919 is to extend to cases in which an authorised electricity undertaker has ceased to operate or changed the method of operation of the whole or a part of the undertaking in pursuance of such a scheme, agreement or arrangement as has already been referred to. Under sect. 2 of the Act of 1933, any question whether a transfer is under or in consequence of the Act of 1919 or whether any cessation or change of operation was in pursuance of a scheme, agreement or arrangement under or in consequence of the Act of 1919 is to be determined by the Electricity Commissioners. [760]

THE ROAD TRAFFIC ACTS, 1930 AND 1934

Compensation is payable under sect. 116 and the Fourth Schedule to the Road Traffic Act, 1930 (*c*), as restricted by sect. 38 of the Road Traffic Act, 1934, and the Second Schedule, to any officer of a local authority who held office under the local authority for a period of not less than two years before August 1, 1930, and who by virtue of sect. 105 of the Act of 1930 (as to working and other agreements), or the repeal by sect. 122 of that Act of enactments and provisions relating to the licensing of public service vehicles by local authorities, or of anything done in pursuance or consequence thereof, suffers any direct pecuniary loss. The expression "officer" includes a servant, but does not include a member of a police force.

The code of compensation resembles that in the L.G.A., 1929 (*d*), which has already been considered in detail.

The compensating authority is the Minister of Transport and aggrieved claimants may appeal to the Treasury within three months after the receipt of notice of the Minister's decision on the claim.

For para. 14 to the Act of 1930, a new paragraph is substituted by the Second Schedule to the Act of 1934, under which compensation for loss under sect. 122 of the Act of 1930 is payable from the Road Fund, while compensation under sect. 105 is payable by the local authority by whom the officer was employed, subject to adjustment later between the parties to the agreement under sect. 105. [761]

(*r*) 7 Statutes 788.

(*t*) See s. 15; *ibid.*, 805.

(*a*) See Electricity (Supply) Act, 1926, s. 38 (2); *ibid.*, 815.

(*b*) 26 Statutes 187.

(*d*) See *ante*, p. 333.

(*s*) *Ibid.*, 826.

(*u*) *Ibid.*, 824.

(*c*) 23 Statutes 685, 693.

THE TOWN AND COUNTRY PLANNING ACT, 1932

Provision for the payment of compensation to an officer who suffers pecuniary loss by virtue of the Town and Country Planning Act, 1932, is contained in sect. 51 of that Act (*e*).

The provisions of sect. 126 of the L.G.A., 1929, and of the Eighth Schedule to that Act (*f*) are to apply to any claim to compensation under the Act of 1932, subject to such modifications as may be made by the M. of H. for the purpose of adapting these provisions to cases arising under that Act. [762]

LONDON

When under the London Government Act, 1899, metropolitan borough councils were constituted, the code for compensation to officers applied by sect. 30 (2) of that Act (*g*) was that provided by sect. 81 (7) of the L.G.A., 1894 (*h*), which in its turn applied sect. 120 of the L.G.A., 1888 (*i*). But a proviso was added to sect. 30 (2) of the Act of 1899 allowing continuous service under any authority or authorities to which that Act referred to be taken into account in calculating the total period of service of any officer entitled to compensation. Sub-sect. (4) of the section also authorised the London Government Act Commissioners to make a scheme for carrying the section into effect (*k*) and also for applying the section to certain officers who were outside its terms.

Neither the code of compensation in the L.G.A., 1933, nor that in the R. & V.A. 1925, extends to London, but the other codes mentioned in this article apply to England and Wales, including London. [762A]

(*e*) 25 Statutes 518.

(*f*) See *ante*, p. 334.

(*g*) 11 Statutes 1240.

(*h*) 10 Statutes 824.

(*i*) *Ibid.*, 767.

(*k*) See the London (Existing Officers) Scheme, 1900; S.R. & O. Rev., 1904, Vol. 8, p. 139.

COMPENSATION FOR REDUNDANT LICENCES

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See also title : INTOXICATING LIQUORS.

The law as to redundant licences is to be found in the Licensing (Consolidation) Act, 1910, and in the Licensing Rules, 1910 (*a*), made under sect. 47 of that Act.

(*a*) S.R. & O., 1910, No. 1180.

Renewal of Licences.—The question of reducing the number of licensed houses in a district first comes before the licensing justices, if after consideration of an application for the renewal or transfer of an old on-licence (*b*) they are of opinion that in the public interest the number of licensed houses should be reduced, and not because any objection is taken (*c*) to the character of the applicant, the unfit structure of the building, the way it is conducted, or that the applicant is not qualified to receive such renewal or transfer. They must then refer the matter to the Compensation Authority with a report as to their reasons, which they must already have specified to the applicant in writing (*d*). Old on-licences are those which were in force on the 15th day of August, 1904 (*e*). [763]

Compensation Authority.—The Compensation Authority is composed as follows (*f*). Petty sessional divisions of counties and boroughs which have a separate commission of the peace are licensing districts, or a whole county (excluding any borough with a separate commission) where it is not divided into petty sessional divisions. For the district which is a petty sessional division of the county, the Compensation Authority is quarter sessions, and where it is a county borough, the whole body of borough justices, and where it is a non-county borough, the quarter sessions for the county. The Compensation Authority may divide their area into districts for the purposes of their powers (*g*), and may delegate any of their powers and duties to a committee (*h*), and may make rules, which must be approved by a Secretary of State for their appointment and procedure. A non-county borough which has a separate commission of the peace, is entitled to appoint a member on such a committee appointed by the quarter sessions of the county, for questions as to the refusal of a renewal of a licence. As to the disqualification of justices, see the cases cited in footnote (*i*). [764]

Powers of Authority.—The Compensation Authority must consider, with any application for renewal which may be referred to them, the reports furnished to them by the licensing justices (*j*), and must give the applicant an opportunity of being heard, as well as other persons interested unless this appears to them unnecessary, and they may refuse the renewal of the licence, subject to the payment of compensation under the Act.

Where land purchased by a local authority for the purposes of a clearance or improvement scheme under Part I. of the Housing Act, 1930, comprises premises in respect of which an old on-licence is in force, the local authority, before purchasing the premises, may undertake that in the event of the renewal of the licence being refused they will pay to the Compensation Authority such sum as may be specified, which shall be treated as part of their expenses in purchasing the

(*b*) Licensing (Consolidation) Act, 1910, ss. 18, 23 (2) (*c*); 9 Statutes 998, 1002.

(*c*) *Ibid.*, Sched. II., Part II.; 9 Statutes 1047.

(*d*) *Ibid.*, s. 18; 9 Statutes 998.

(*e*) *Ibid.*, Sched. II., Part I.; 9 Statutes 1047.

(*f*) *Ibid.*, s. 2; 9 Statutes 986.

(*g*) *Ibid.*, s. 5; 9 Statutes 989.

(*h*) *Ibid.*, s. 6; 9 Statutes 989.

(*i*) *R. v. Sheffield JJ., Ex parte Rawson (T.) & Co., Ltd.* (1927), 138 L. T. 284; Digest (Supp.); *Frome United Breweries Co., Ltd. v. Bath JJ.*, [1926] A. C. 586; Digest (Supp.); *R. v. Leicester JJ., Ex parte Allbrighton*, [1927] 1 K. B. 557; Digest (Supp.). And see 30 Digest, pp. 49—50, 61.

(*j*) Licensing (Consolidation) Act, 1910, s. 19; 9 Statutes 999.

land, and if after purchasing or contracting to purchase the premises, the local authority intimate to the licensing justices that they are willing to surrender the licence, the justices may refer the matter to the Compensation Authority (*k*). If the Compensation Authority are satisfied that it is a redundant licence, they must contribute from the compensation fund towards the compensation paid by the local authority in respect of the acquisition of the premises a sum not exceeding that payable on the refusal of the renewal of the licence (*l*).

The Licensing Rules, 1910 (*m*), deal with the procedure of the Compensation Authorities at the hearing. If the justices refer a licence, they must grant the renewal provisionally (*n*); if the Compensation Authority refuse the renewal, the licence ceases from the expiration of the seventh day after the day fixed for the payment of the compensation (*o*). The persons interested are the licensee, the freeholder or leaseholder and mortgagee (*p*). The report of the justices must be considered by the Compensation Authority, but it is not in itself evidence on which they can act (*q*). Their inspection of a map is not evidence to deduce redundancy nor, because they think there are too many licensed houses, can the authority select one or more for reduction haphazard (*r*). [765]

Payment of Compensation.—The compensation is fixed (*s*) either by agreement or, in default of agreement, by the Commissioners of Inland Revenue in the same manner as the valuation of an estate for the purpose of estate duty (*t*). The amount is calculated on the value which would be given by a hypothetical purchaser of the premises fully licensed, added to the value of the trade fixtures, less the value as a building for residence or other use (*u*). The compensation is divided amongst the persons interested, including the holder of the licence, in such shares as the Compensation Authority may decide, and if any question arises on the division they may refer the matter to the county court judge of the district for decision (*a*). [766]

Compensation Fund.—A fund is collected by the Compensation Authority by imposing each year in respect of all old on-licences renewed in respect of premises within their area, a levy at rates not exceeding and graduated in the same proportion as the maximum rates given in the Third Schedule to the Act (*b*). The holder of a licence, who pays a charge, may deduct a sum fixed by the scale in Part II. of the Third Schedule from his rent notwithstanding any agreement to the con-

(*k*) Housing Act, 1930, s. 14; 23 Statutes 406.

(*l*) *Ibid.*

(*m*) S.R. & O., 1910, No. 1180, rr. 7—26.

(*n*) *Ibid.*, r. 41.

(*o*) *Ibid.*, r. 42.

(*p*) *Ibid.*, r. 22; and Licensing (Consolidation) Act, 1910, s. 51; 9 Statutes 1016.

(*q*) *Raven v. Southampton JJ.*, [1904] 1 K. B. 430; 30 Digest 63, 487.

(*r*) *Colchester Brewing Co., Ltd. v. Tendring JJ.*, [1916] 2 K. B. 126; 30 Digest 51, 397. And see *Dartford Brewery Co. v. London County Quarter Sessions*, [1906] 1 K. B. 695; 30 Digest 51, 399, and pp. 50—52.

(*s*) S.R. & O., 1910, No. 1180, rr. 27—30.

(*t*) Licensing (Consolidation) Act, 1910, s. 20; 9 Statutes 1000; Finance Act, 1894, s. 7; 8 Statutes 128.

(*u*) See cases, 30 Digest, pp. 55—58.

(*a*) C. C. Rules, Order 50, rr. 37—58.

(*b*) Licensing (Consolidation) Act, 1910, s. 21 (1) and Sched. III., Part I.; 9 Statutes 1001, 1048.

trary (c). The rules control the keeping of the accounts of the fund (d), and the mode in which the Compensation Authority may borrow under sect. 21 of the Act on the security of the fund. As soon as may be possible after the shares have been decided, notices must be sent to the persons entitled to compensation, and must give a date not less than two or more than six weeks after the date of the notice, for the payment of the compensation (e). [767]

Appeals.—Where the amount of compensation is determined by the Commissioners of Inland Revenue, there is an appeal to the High Court (f), and any costs incurred by the commissioners must be paid (g) out of the amount paid as compensation, unless the High Court orders them to be paid by some party, other than the commissioners. The latter may, however, be ordered to pay the costs if they have acted unreasonably (h). [768]

London.—The Compensation Authority for the County of London is the court of quarter sessions, and for the City of London, the whole body of City justices; see sect. 2 (2), (4) of the Act. [768A]

(c) Licensing (Consolidation) Act, 1910, s. 21 (3), Sched. III., Part II.; 9 Statutes 1001, 1049.

(d) S.R. & O., 1910, No. 1180, rr. 55—71.

(e) *Ibid.*, rr. 34—36.

(f) Licensing (Consolidation) Act, 1910, s. 20 (2); 9 Statutes 1000.

(g) *Ibid.*, s. 20 (4); 9 Statutes 1000, and r. 33.

(h) *Re Hardy's Crown Brewery, Ltd. and St. Philip's Tavern, Manchester*, [1910] 2 K. B. 257, C. A.; subsequent proceedings, 103 L. T. 520, C. A.; 30 Digest 53, 410.

COMPENSATION FOR TOWN PLANNING

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BETTERMENT ;
COMPENSATION FOR LOSS OF OFFICE ;
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*TOWN AND COUNTRY PLANNING ;
TOWN PLANNING AGREEMENTS WITH OWNERS ;
TOWN PLANNING AUTHORITIES ;
TOWN PLANNING SCHEMES.

* For general principles and law of land planning.

INTRODUCTORY

The word "scheme" as used in the Town and Country Planning Act, 1932 (a), suggests the creation of a broad framework of future

improvement in the town or area concerned which should possess such elasticity as to permit of its being adaptable to varying and possibly unforeseen factors, the chief purpose being to regulate development in an orderly manner. A scheme may be purely local in character, or it may be co-ordinated by the county authority or other joint committee and thus affect several borough councils and urban or rural district councils, and it seems eminently desirable that future development areas should be planned with considerable judgment and practical foresight, and with a due regard to the preservation of ancient buildings and other subjects of interest or beauty.

Upon the maxim "*Salus Populi est suprema lex*," that due regard for the public welfare is the highest law, the statute is founded, and upon the principles of equity provision is made for compensation in certain cases; there is also a provision which entitles the authority under certain conditions to claim a payment for betterment (*b*) up to 75 per cent. of the increased value. A scheme may provide either in general or particularised terms that compensation shall not be payable in certain cases, or that it may be limited in degree or in amount. [769]

THE PRINCIPLES OF COMPENSATION

Lord ELDON said: "When I look upon these Acts of Parliament, I regard them all in the light of contracts made by the Legislature on behalf of every person interested in anything to be done under them (*c*)."

In considering the Act of 1932 from the point of view of compensation, it may be said that the statute is both enabling and restraining; enabling in that it allows an authority to do that which they consider desirable for the welfare of the community in general, and restraining in that it prevents the individual owner from doing anything which might prejudice that object. The Act is conceived on broad lines within which there is scope for reconsideration of the original proposals and a general adaptability to the gradual development of an area.

Where detriment is caused to an owner by the provisions of a scheme he is entitled to claim, subject to the statutory exclusion of certain matters, compensation in money of such amount as will be equivalent to the damage suffered; in this sense damages and compensation are almost synonymous terms. In a further sense the compensation claimed is in the nature of special damages because it has to be specifically alleged and specifically proved, and is the essence of the claim. Its measure is the diminished value of the property to the claimants interested in it (*d*); it may be the value of an old house; it is not necessarily the sum it would cost to erect a new one (*e*), and even if the house were only leased to an owner who was under a covenant to repair, the same principle would apply, for his liability on the covenant is calculated in the same way (*f*).

(b) See title BETTERMENT, Vol. II., p. 35.

(c) *Blakeman v. Glamorganshire Canal Navigation* (1824), 1 My. & K. 162; 42 Digest 738, 1622.

(d) *Jones v. Gooday* (1841), 9 M. & W. 736; 38 Digest 116, 833.

(e) *Lukin v. Godsall* (1795), Peake, Add. Cas. 15, N. P.; 36 Digest 125, 832; *Dodd v. Holme* (1834), 1 Ad. & El. 493; 19 Digest 169, 1177; *Hide v. Thornborough* (1846), 2 Car. & Kir. 250, N. P.; 19 Digest 194, 1469; *Moss v. Christchurch R.D.C.* [1925] 2 K. B. 750; 26 Digest 432, 1509.

(f) *Yates v. Dunster* (1855), 11 Exch. 15; 31 Digest 368, 5142; *Whitham v. Kershaw* (1885), 16 Q. B. D. 618; 31 Digest 360, 5058.

The damages claimable are those commensurate to the injury proposed (*g*) or in fact done.

They must flow directly from the injurious affection contemplated or done and must not be too remote (*h*), and as the statute is restrictive of the common law it should be restrictively construed (*i*), but the fact that it may interfere with common law rights is no reason why it should be construed differently from any other Act of Parliament (*k*).

It must, however, be remembered that it is a sound rule to construe a statute in conformity with the common law rather than against it, except where or so far as the statute is plainly intended to alter the course of the common law; an additional reason for following the common law is the mischief which would result from a different construction (*l*).

Where there is authority by statute to do that which apart from the statute would be unlawful, and the authority is conferred for some distinct and definite purpose which is abused by being used for some other and different purpose, the wrongdoer is wrong *ab initio* in respect of what can be proved to be in excess of the authority conferred (*m*), and it is a proper rule of construction not to construe an Act of Parliament as interfering with or injuring person's rights without compensation unless one is obliged so to construe it (*n*). The legislature never intended that the community should profit at the expense of a few of its members (*o*). [770]

GENERAL RIGHT TO COMPENSATION UNDER THE TOWN AND COUNTRY PLANNING ACT, 1932

The general scheme of the compensation provisions of the Town and Country Planning Act, 1932 (subsequently referred to as "the Act"), is to provide for compensation in respect of (1) injurious affection under sect. 18, or (2) compulsory acquisition under sect. 25 (*p*).

Subject to the provisions contained in sects. 19 and 20 (*q*) as to the exclusion of compensation in certain instances, compensation is payable under sect. 18 in respect of:

- (1) Injurious affection (*a*) by the coming into operation (*r*) of any provision (*s*) in a scheme (*t*); (*b*) by the execution of any

(*g*) *Evelyn v. Raddish* (1817), 7 Taunt. 411; 31 Digest 333, 4763; *Johnstone v. Hall* (1856), 2 K. & J. 414; 31 Digest 162, 2959.

(*h*) *Hadley v. Baxendale* (1854), 9 Exch. 341; 17 Digest 93, 101.

(*i*) *Ash v. Abdy* (1678), 3 Swan. 664; 42 Digest 708, 1253.

(*k*) *Per* BRETT, J.; *The Warkworth* (1883), 9 P. D. 20; 42 Digest 708, 1257.

(*l*) *Per* BYLES, J.; *R. v. Morris* (1867), L. R. 1 C. C. R. 90; 42 Digest 709, 1262.

(*m*) *Westminster Corpn. v. London and North Western Rail. Co.*, [1903] A. C. 426, *per* Lord LINDLEY, at p. 439; 42 Digest 724, 1440.

(*n*) *A.-G. v. Horner* (1884), 14 Q. B. D. 245, *per* BRETT, M.R., at p. 257; 42 Digest 743, 1679.

(*o*) *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243, *per* Lord O'HAGAN; 11 Digest 142, 272.

(*p*) 25 Statutes 492, 502; see *post*, pp. 358 *et seq.*

(*q*) *Ibid.*, 492, 496; see *post*, pp. 346 *et seq.*

(*r*) First Schedule, Part II. (25 Statutes 526), provides for notification in a local newspaper stating that the scheme has been laid before both Houses of Parliament and is capable of coming into operation. Objections to its validity must be raised within six weeks of this notice, and the scheme cannot later be challenged.

(*s*) Property is not, for the purposes of the Act as to compensation, to be deemed injuriously affected by the provisions of s. 47; see sub-s. (7); 25 Statutes 514.

(*t*) Contents of schemes, and authorities responsible for enforcing them, are dealt with by s. 11; 25 Statutes 484.

work under a scheme; (c) by the coming into operation of an order prohibiting the demolition of a building of special architectural or historic interest under sect. 17 (*u*).

- (2) Damage suffered by reason of any action taken to enforce the provisions of a scheme under sect. 13 (*a*).
- (3) Expenditure incurred for the purpose of (a) complying with any provision in a scheme; (b) making a claim for compensation; (c) resisting a claim for betterment; which expenditure is rendered abortive by a subsequent variation or revocation of the scheme (*b*).

In order to entitle a party to recover compensation for injurious affection, the damage must arise from something which would, if done without statutory authority, have given rise to a cause of action (*c*). In other words, in order to have a right to compensation against promoters of an undertaking in respect of any act done under their statutory powers, the person claiming must have had a good cause of action in respect of that act if it had been done by a party not so authorised. The promoters of an undertaking, having acquired land, may, therefore, use it in any way in which an adjoining owner might lawfully have used it without conferring any right to compensation. For the same reason damages which would be too remote to be recovered in an action cannot be recovered as compensation.

Compensation for injurious affection is further only recoverable in respect of losses sustained in consequence of what the authority have lawfully done under their statutory powers (*d*). If, therefore, it exceeds its statutory powers either by doing an act not authorised, or by doing an authorised act in a negligent manner, the person aggrieved has a remedy by action, and will not be entitled to compensation under the Act (*e*). [771]

The injurious affection must have reference to the land itself in which the person claiming compensation has an interest, or its incidents, and the damage must arise from a physical interference with some right, public or private, which the owner is by law entitled to make use of in connection with such property and which gives an additional market value to it apart from the uses to which any particular owner

(*u*) 25 Statutes 490 (power to make orders for preservation of certain buildings).

(*a*) *Ibid.*, 486 (power to enforce and carry into effect schemes). See s. 20 (2), *infra*.

(*b*) S. 18; *ibid.*, 492.

(*c*) *Glover v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 912; 11 Digest 144, 232; *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 11 Digest 140, 265; *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 11 Digest 142, 272; *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; 11 Digest 140, 259.

(*d*) *Caledonian Rail. Co. v. Colt* (1860), 3 Macq. 833; 11 Digest 136, 225; *Imperial Gas Light and Coke Co. v. Broadbent* (1859), 7 H. L. Cas. 600; 11 Digest 133, 208.

(*e*) *Brine v. Great Western Rail. Co.* (1862), 2 B. & S. 402; 38 Digest 38, 227; *Clowes v. Staffordshire Potteries Waterworks Co.* (1872), 8 Ch. App. 125; 11 Digest 138, 252; *Geddis v. Bann Reservoir (Proprietors)* (1878), 3 App. Cas. 430; 13 Digest 399, 1223; *Clothier v. Webster* (1862), 12 C. B. (N. S.) 790; 38 Digest 41, 241. If they, while carrying out their authorised works, fail to take sufficient care to prevent damage, they will be liable to an action in respect of such injury, and also to pay compensation for the damage caused by their acts; *Utley v. Todmorden Local Board of Health* (1874), 44 L. J. (C. P.) 19; 11 Digest 291, 2198.

or occupier may put it (f). But it is not limited to damages sustained by the persons whose lands are taken, used or directly interfered with, and the right to compensation extends to, and may be asserted in respect of, consequential damage where the injury arises independently of the taking of the land (g). Thus, if land taken or affected has been subject to restrictive covenants for the benefit of other land, actions done by the promoters which prevent such covenants from being carried out (h), or the breach of such covenants by the promoters (i), will confer on the owner of that other land a right to compensation for injurious affection. Interference with any private right appurtenant to property will afford a ground for compensation, unless specifically excluded in the scheme, provided the value of the property is thereby reduced. The obstruction of easements such as rights of way (k), of light (l), and of support (m), will therefore *prima facie* entitle an owner of a dominant tenement to a claim for compensation for any loss he may suffer. Even if the right is a public right, as, for instance, access to premises by a public highway, compensation will be payable for damage or loss occasioned by interference with such a right, provided that the injury suffered would at common law have afforded a cause of action (n). But a mere personal inconvenience, obstruction or damage to a man's trade or the goodwill of his business, not connected with the land, will not be sufficient, although either of them might, but for the statute which authorises the doing of the thing occasioning injury, have been the subject of an action against a person occasioning it (o). Where the property has a special value, as, for example, a hotel or public house, the owner is entitled to compensation for depreciation on the footing of that special value (p). [772]

(f) Personal inconvenience caused by a level crossing near a house, will not furnish a ground for compensation if the property itself is not depreciated in value; *Caledonian Rail. Co. v. Ogilvy* (1855), 25 L. T. (o. s.) 106; 11 Digest 140, 261.

(g) *East and West India Docks and Birmingham Junction Rail. Co. v. Gatlke* (1851), 3 Mac. & G. 155; 11 Digest 132, 202.

(h) *Furness Rail. Co. v. Cumberland Co-operative Building Society* (1884), 52 L. T. 144; 11 Digest 139, 258. See *Re Masters and Great Western Rail. Co.*, [1901] 2 K. B. 84; 11 Digest 146, 300; *Harding v. Metropolitan Rail. Co.* (1872), 7 Ch. App. 154; 11 Digest 197, 762.

(i) *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437; 11 Digest 145, 297; *Long Eaton Recreation Grounds Co. v. Midland Rail. Co.*, [1902] 2 K. B. 574; 11 Digest 146, 298; cf. *Baily v. De Crespigny* (1869), L. R. 4 Q. B. 180; 31 Digest 465, 6111.

(k) *Glover v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 912; 11 Digest 144, 282; *Furness Rail. Co. v. Cumberland Co-operative Building Society*, *supra*; *Ford v. Metropolitan and Metropolitan District Rail. Cos.* (1886), 17 Q. B. D. 12; 11 Digest 143, 276.

(l) *Eagle v. Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638; 11 Digest 144, 286; *Clark v. London School Board* (1874), 9 Ch. App. 120; 11 Digest 137, 233; *R. v. Poulter* (1887), 20 Q. B. D. 132; 11 Digest 149, 323.

(m) See *Metropolitan Board of Works v. Metropolitan Rail. Co.* (1869), L. R. 4 C. P. 192; 41 Digest 36, 263, explained in *Roderick v. Aston Local Board* (1877), 5 Ch. D. 328; 11 Digest 292, 2201.

(n) *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 11 Digest 142, 272; *Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82; 11 Digest 141, 270.

(o) *Metropolitan Board of Works v. McCarthy*, *supra*.

(p) *Wadham v. North Eastern Rail. Co.* (1885), 16 Q. B. D. 227; 11 Digest 141, 266.

SUBJECT MATTERS OF COMPENSATION

Acquisition of the whole or part of a property may give rise to a claim for compensation, and likewise injurious affection (*g*) of a legal right may be the subject for inquiry as to compensation; and the matters to be dealt with by schemes are sufficiently wide in their scope as to affect most classes of rights, whether negative or positive; these are:

(1) Streets, roads and other ways, and stopping up and diversion of existing highways, including churchways. (2) Buildings, structures and erections (*r*). (3) Open spaces, public and private. (4) The reservation of sites for places of religious worship, or for houses for the residence of officiating ministers, or burial places in connection therewith. (5) The reservation of lands as sites for aerodromes. (6) The prohibition, regulation and control of the deposit or disposal of waste materials and refuse. (7) Sewerage, drainage and sewage disposal. (8) Lighting. (9) Water supply. (10) Ancillary or consequential works. (11) Extinction or variation of private rights of way and other easements. (12) Dealing with or disposal of land acquired by the responsible authority or by a local authority. (13) Power of entry and inspection. (14) Power of the responsible authority to remove, alter or demolish any obstructive work. (15) Power of the responsible authority to make agreements with owners and of owners to make agreements with one another. (16) Power of the responsible authority or a local authority to accept any property whether real or personal for the furtherance of the objects of any scheme, and provision for regulating the administration of any such money or property and for the exemption of any assurance with respect to money or property so accepted from enrolment under the Mortmain and Charitable Uses Act, 1888. (17) Application of statutory enactments with the necessary modifications and adaptations. (18) Carrying out and supplementing the provisions of the Act for enforcing schemes and for that purpose imposing pecuniary penalties for breach of or failure to comply with schemes and making provision for the recovery thereof in a court of summary jurisdiction. (19) Limitation of time for operation of scheme. (20) Co-operation of the responsible authority with the owners of land included in the scheme or other persons interested. (21) Charging on any land the value of which is increased by the operation of a scheme the sum required to be paid in respect of that increase and for that purpose applying with the necessary adaptations the provisions of any enactments dealing with charges for improvements of land (*s*). [773]

The enactments mentioned in the Fifth Schedule to the Act are repealed (*t*) by sect. 54 (*u*), and, subject to sect. 52 (2) (*a*), such of the provisions of any local Act as modify the provisions of the Town Planning Act, 1925, in its application to a particular locality are also repealed, provided that (1) where at the commencement of the Act

(*g*) See last paragraph.

(*r*) See ss. 12 and 13; 25 Statutes 485.

(*s*) Second Schedule; 25 Statutes 528.

(*t*) 15 & 16 Geo. 5, c. 16 (Town Planning Act, 1925); 13 Statutes 1079; the whole Act. 17 & 18 Geo. 5, c. 23 (The Crown Lands Act, 1927); 3 Statutes 336; s. 12. 19 Geo. 5, c. 17 (The L.G.A., 1929); 10 Statutes 914—916; ss. 40—45.

(*u*) 25 Statutes 522.

(*a*) *Ibid.*, 519.

(April 1, 1933) there is outstanding any claim for compensation duly made under any Act repealed by the Act, or (2) any claim is made for any amount in respect of an increase in the value of property, or (3) the time limited under any of the repealed Acts for making such a claim has not expired, that outstanding claim, and any such claim made under a repealed Act within the time limited by it, is to be entertained and may be enforced in the same manner in all respects as if the 1932 Act had not been passed (b). [774]

Under certain circumstances an owner of land might be entitled to compensation under a scheme, but the scheme is subsequently revoked or amended in a manner which might operate detrimentally to the owner. Provision is made for such a contingency by sect. 6 (5), of the Act, so that where the Minister is giving his approval to a resolution by the authority to revoke in its entirety or amend in part a scheme or is making an order thereunder, he must by the imposition of conditions or by the terms of his order secure that :

1. any person whose property has been injuriously affected by reason that since April 1, 1933, the Minister has refused, on an appeal made to him under an interim development order, to grant an application for permission to develop the property, or that the Minister has imposed any conditions on the grant of an application made since that date ; and
2. any person who, for the purposes of complying with any conditions imposed on the grant of such an application, has since April 1, 1933, incurred expenditure which is rendered abortive by the revocation of the resolution to prepare a scheme,

shall be entitled, if he makes a claim for the purpose within twelve months from the date when the resolution is approved or the order is made, as the case may be, to claim compensation from such authority as may be specified in the condition or order.

Provided that the Minister is not to secure a right to compensation in respect of any injurious affection of property arising from refusal to permit any development or from the imposition of any conditions, where he is satisfied that, if a scheme had come into operation containing provisions which would have had the effect of prohibiting that development or under which those conditions could have been enforced, no right to compensation would have arisen under the Act of 1932 in respect of the injurious affection of the property by the coming into operation of those provisions (c). [775]

Compensation may also be claimable if a resolution to prepare a scheme is not revoked, but the scheme is so varied that, when it is submitted to the Minister for approval, it does not contain provision for reservation of land for a public purpose or the execution of works in anticipation of which expenditure has been necessarily incurred by an owner. The claim is to be made within twelve months and is limited to the amount of the abortive expenditure (d). Such compensation is not claimable in a case where the scheme for the preparation or adoption of which a resolution has taken effect is

(b) S. 54 (1) (b) ; 25 Statutes 523.

(c) It should be noted that the above provision is not to apply in the case of a resolution to prepare a scheme varying an existing scheme or to prepare a supplementary scheme as defined by the Act ; see s. 6 (8) ; 25 Statutes 477.

(d) S. 10 (7) ; 25 Statutes 484 ; and see S.R. & O., 1933, No. 236.

a supplementary scheme or a scheme varying an existing scheme (e).
[776]

Where an owner desires to erect a new building on the site (f) of a previously existing one (g) and its extent or its character is prejudicially affected by the provisions of a scheme, the authority may, if they think fit (h), make a contribution towards any damage or expense attributable to their decision (i). Appeal is to the Minister, whose decision is final; but if the decision is that the land should be reserved for a public open space, the authority may be required to buy the land at an agreed price or one determined by arbitration (k). [777]

EXCLUSION OF COMPENSATION

The Minister of Health has by sect. 19 of the Act of 1932 power to exclude compensation in certain classes of cases and a scheme (m) may provide (either generally, or as respects all property except such as may be specified for the purpose in the scheme) that no compensation shall be payable under head (1) on pp. 341, 342, *ante*, in respect of such provisions as are described in the following paragraph (n).

The above power to exclude compensation is in respect of injurious affection of property by the coming into operation (o) of any provision of the scheme which (1) prescribes the space (p) about buildings; or (2) limits the number of buildings (q); or (3) regulates or empowers the responsible authority to regulate the size, height, design or external appearance of buildings; or (4) prohibits or restricts building operations only pending the coming into operation of a general development order; or (5) prohibits or restricts building operations permanently on the ground that, by reason of the situation or nature of the land, the erection of buildings thereon would be likely to involve danger or injury to health, or excessive expenditure of public money in the provision of roads, sewers, water supply or other public services; or

(e) S. 10 (9); 25 Statutes 484.

(f) "Building" includes a structure or erection, and "site" in relation to a building includes the area of any offices, outbuildings, yard, court or garden occupied or intended to be occupied therewith (s. 53; 25 Statutes 520).

(g) For definition of existing building, see s. 53; 25 Statutes 520.

(h) See *Roberts v. Hopwood*, [1925] A.C. 578; 33 Digest 20, 83, where Lord WRENCH said: "a discretion does not empower a man to do what he likes merely because he is minded to do so—he must in the exercise of his discretion do not what he likes but what he ought; in other words he must by the use of his reason ascertain and follow the course which reason directs."

(i) S. 10 (3), (4); 25 Statutes 482.

(k) A resolution or authority to prepare a scheme must be registered as a local land charge; the Local Land Charges Rules, 1927, Arts. 6, 7, provide that the entry shall consist of the resolution or authority and any interim development orders made in connection therewith (Land Charges Act, 1925, s. 15 (7); 15 Statutes 539; Law of Property (Amendment) Act, 1926, s. 7 and Schedule; 15 Statutes 549).

(m) For definition, see s. 53 (25 Statutes 520). As to schemes under Acts repealed by this Act, see s. 54 (1) (*ibid.*, 522). Supplementary orders and general development orders are to be deemed to form part of the schemes to which they relate so long as the orders remain operative.

(n) S. 19 (1); 25 Statutes 492.

(o) As to the date of this, see First Schedule, Part II., para. 4; 25 Statutes 527.

(p) See *Re Ellis and Ruislip-Northwood U.D.C.*, [1920] 1 K.B. 343; 38 Digest 218, 524, where it was held that the prescribing of a building line is not prescribing space about buildings; but see s. 19 (1), para. (k), *post*.

(q) See also sub-s. (2) (ii.) and (3); 25 Statutes 494, 495.

(6) prohibits (otherwise than by way of prohibition of building operations) the use of land for a purpose likely to involve danger or injury to health, or serious detriment to the neighbourhood, or restricts (otherwise than by way of restriction of building operations) the use of land so far as may be necessary for preventing such danger, injury or detriment (*r*); or (7) restricts the manner in which buildings may be used; or (8) in the interests of safety regulates or empowers the responsible authority (*s*) to regulate the height and position of proposed walls, fences or hedges near the corners or bends of roads, other than highways maintainable at the material date by the Minister of Transport, a county council or other highway authority (*t*); or (9) limits the number or prescribes the sites of new roads entering a classified road, or a road, or the site of a proposed road, which is declared by the Minister of Transport to be intended to be a classified road; or (10) in the case of land which at no time within the period of five years immediately preceding the material date was or formed part of the site of a building, fixes in relation to any street or proposed street a line beyond which no building in that street or proposed street may project; or (11) in the case of the erection of any building intended to be used for purposes of business or industry, requires the provision of accommodation for loading, unloading or fuelling vehicles with a view to preventing obstruction of traffic (*u*) on any highway (*a*).
[778]

By sect. 19 (2) the Minister is not to approve the insertion in a scheme of such a provision excluding compensation as above under sect. 19 (1) or himself insert in a scheme such a provision :

1. Unless he is satisfied that, having regard to the objects of the scheme, the provision in respect of which compensation is to be excluded is proper and reasonable and expedient having regard to the local circumstances. **[779]**
2. If the provision in respect of which compensation is to be excluded is such a provision as is mentioned in paras. (a), (b), (c), (d) or (g) of sect. 19 (1) (*b*), unless the scheme contains also provisions satisfactory to him for securing that :
 - (a) existing buildings may be maintained and their existing use continued (*c*); and

(*r*) See also s. 19 (2); 25 Statutes 494.

(*s*) For authorities responsible for enforcing schemes, see s. 11; *ibid.*, 484.

(*t*) For the meaning of "building operations," "fences and hedges," "material date," "sites," "classified roads," see s. 53; *ibid.*, 520. See also Roads Improvement Act, 1925 (c. 68), s. 4 (9 Statutes 221), as to prevention of obstruction to view at corners in a highway maintainable by the Minister of Transport, county council or other highway authority. As to highway authorities generally, see preliminary note, 9 Statutes 11, "Highways, Streets and Bridges."

(*u*) An owner of land adjoining a highway is entitled to access to such highway at any point at which his land actually touches it, and interference with such right has been held to amount to "injurious affection" of his premises for compensation purposes. See *Moore v. Great Southern and Western Rail. Co.* (1858), 10 I. C. L. R. 46; 11 Digest 136, *iv*. This right of access includes the reasonable use of the highway for loading and unloading purposes. See *A.-G. v. Brighton and Hove Co-op. Supply Assn.*, [1900] 1 Ch. 276; 26 Digest 425, 1442; *A.-G. v. Smith (W. H.) & Sons* (1910), 103 L. T. 96; 26 Digest 425, 1443.

(*a*) S. 19 (1); 25 Statutes 492.

(*b*) *Supra*, paras. (1), (2), (3), (4), (7), of the cases in which compensation may be excluded.

(*c*) See also sub-s. (4); 25 Statutes 495.

(b) reasonable alterations and, in proper cases, extensions of existing buildings may be made ; and

(c) where an existing building (d) or a building which was standing within two years before the material date is destroyed or demolished, a new building having at least an equal cubic content above the level of the ground and, in addition in the case of premises used for business or industry, at least an equal superficial area on the ground floor, may be erected on the same site, if commenced within two years after the destruction or demolition of the previous building, or within such longer period as the responsible authority may permit (e) ; and

(d) a new building so substituted as aforesaid may be used for any purpose of the same or a similar character as that for which the previous building was last used before its destruction or demolition, notwithstanding that its use for that purpose would be contrary to the provisions of the scheme, unless such a use is declared in the scheme to be both contrary to the provisions thereof and also of a noxious or otherwise offensive character. [780]

3. If the provision in respect of which compensation is to be excluded is such a provision as is mentioned in para. (f) (f) of sect. 19 (1), in so far as that provision :

(a) prohibits or restricts the winning of minerals by underground working ;

(b) prohibits or restricts as respects any land the winning of minerals by surface working, unless the land is reserved by the scheme and has been substantially developed for residential purposes ; or

(c) prohibits or restricts as respects any land so reserved the winning by surface working of minerals, if the Minister is satisfied upon representations being made to him that the minerals, or the right to win the minerals, had before the material date been acquired by some person for the purpose of winning them, or had before that date devolved upon some person desirous of winning them.

The effect of the last provision is that prohibition or restrictions on the winning or working of minerals may be an injurious affection for which a claim for compensation may be made, and that such a claim may not be excluded by the insertion of a provision to that effect in a scheme. Minerals, as defined in sect. 53, include minerals and substances in or under land of a kind ordinarily worked for removal by underground or by surface working. In a case under another statute, it was stated that the word " minerals " means primarily all substances, other than the agricultural surface of the ground, which may be got for manufacturing or mercantile purposes, whether from a mine as the

(d) For definition of existing building, see s. 53 ; 25 Statutes 521. As to when a building is begun, cf. *White v. Sunderland Corpn.* (1908), 88 L. T. 592 ; 38 Digest 191, 291 ; and see S.R. & O., 1933, No. 236, para. 2 (1), which defines existing building as one erected or constructed before the resolution date and includes a building erected or constructed in pursuance of a contract made before or begun before but completed after that date.

(e) See also sub-s. (3) ; 25 Statutes 495.

(f) *Supra*, para. 6 of cases in which compensation may be excluded.

word would seem to signify, or such as stone or clay which are got by open working (g). In various cases under Railway Acts, where also the intention was that powers given of compulsory acquisition of the surface or rights over it should not prevent the owner from working the subjacent minerals, it has been held that the acquiring authority cannot obtain rights to prevent such working, otherwise than by purchase of them. Thus a railway company cannot avoid the provisions of the statutory mining code by purchasing a stratum of minerals below the surface within a limit, and claiming a common law right of support for that stratum from subjacent or adjacent minerals (h); a railway company who had taken by compulsory conveyance certain land under which the owners of the mines continued to work them, are not entitled to prevent such workings without paying compensation, notwithstanding that the railway is made upon the lands and the mines cannot be further worked without the probability of letting down the surface (i); and if a company refuse to make compensation for mines requisite for the support of their railway, they can only compel the mine owner to work his mines in a proper manner according to the custom of the district (k). If a railway company purchases compulsorily, it is not entitled to a conveyance of the mines and minerals unless they have been expressly purchased, even where the land has been valued and taken at a larger price as building land (l). The measure of damages for coal compulsorily left, is not only the value of the coal in the bed, but also the additional profit which could be made by getting it (m). But there is no rule which imposes on a claimant the burden of proving by costly experiments the mineral contents of his land, and it does not follow, because a seam of coal is not presently workable at a profit, that no compensation is to be given for it if it is likely to prove profitable in the future (n). But if the owner holds the property subject to restrictions, the question of how far those restrictions affect the value is to be considered in assessing the compensation (o). [781]

4. If the provision in respect of which compensation is to be excluded is such a provision as is mentioned in para. (i.) of sub-sect. 19 (1) (*supra*, para. 9, limiting the number or prescribing the sites of new roads entering classified roads), unless the Minister is satisfied if representations are made to him in any particular case, and the case appears to him to be a proper one, that reasonable means of access from neighbouring land to a highway will be provided. [782]
5. If the provision in respect of which compensation is to be excluded is such a provision as is mentioned in para. (k) of sub-sect. 19 (1)

(g) *Midland Rail. Co. v. Haunchwood Brick and Tile Co.* (1882), 20 Ch. D. 552, *per* KAY, J.; 34 Digest 603, 3.

(h) *London and North Western Rail. Co. v. Howley Park Coal and Cannel Co.*, [1913] A. C. 11; 11 Digest 152, 345.

(i) *Great Western Rail. Co. v. Fletcher* (1860), 5 H. & N. 689; 11 Digest 152, 347.

(k) *Great Western Rail. Co. v. Bennett* (1867), L. R. 2 H. L. 27; 11 Digest 152, 349.

(l) *Re Metropolitan District Rail. Co. and Cotton's Trustees* (1881), 45 L. T. 103, C. A.; 11 Digest 152, 346.

(m) *Barnsley Canal Co. v. Twibell* (1844), 7 Beav. 19; 11 Digest 162, 410.

(n) *Brown v. Railways Commissioner* (1890), 15 App. Cas. 240; 11 Digest 126, 163.

(o) *Corrie v. MacDermott*, [1914] A. C. 1056; 11 Digest 124, 157.

(*supra*, para. 10, fixing a line beyond which buildings may not project), and so far as concerns any particular land, unless he is satisfied, if representations are made to him as respects that land, that the area of the land of the owner fronting the street or proposed street will not be diminished to such an extent by the fixing of the building line as to render it less suitable for the erection of buildings in conformity with the provisions of the scheme. [783]

By sect. 19 (3), notwithstanding the insertion in a scheme of such provisions satisfactory to the Minister as are mentioned in para. ii. of sect. 19 (2) (*ante*, p. 347), if and in so far as any alteration or extension of an existing building, or the substitution of a new building for a previous building which is an alteration, extension or substitution which is authorised by or might be permitted under the said provisions, would not be in conformity with or would contravene any provision of the scheme, the responsible authority may prohibit that alteration, extension or substitution, but in that case the person whose property is injuriously affected by the prohibition shall, if he makes a claim within twelve months after receiving notice of the prohibition, be entitled notwithstanding anything in sect. 19 (1) to recover compensation in respect of that injurious affection from the responsible authority in accordance with the provisions of the Act (*p*). [784]

Further, notwithstanding the insertion in a scheme of such provisions satisfactory to the Minister as are mentioned in para. ii. of sect. 19 (2), if and in so far as the continuance of any existing building, or of any existing use of an existing altered, extended or substituted building, is not in conformity with or contravenes any provision of the scheme, nothing in that sub-section is to be construed as precluding the responsible authority from exercising at any future time their powers under sect. 13 of the Act (*q*) in respect of that use, subject, however, to payment of compensation in accordance with the provisions of sect. 18 (1), para. (b), of the Act (*r*). [785]

In considering whether he ought to approve the insertion in a scheme of a provision excluding compensation or ought himself to insert such a provision the Minister is to have regard to—

- (a) the nature and situation and existing development of the land affected by the provision in respect of which compensation is excluded and of neighbouring land not so affected; and
- (b) the interests of any person who would be affected by the provision in respect of which compensation is excluded (*s*).

[786]

(*p*) Under ss. 22, 23; 25 Statutes 500.

(*q*) Power to enforce and carry into effect schemes.

(*r*) Any person who suffers damage by reason of any action taken by a responsible authority under s. 13; 25 Statutes 486 (*i.e.* power to enforce and carry into effect schemes) may make a claim within the time limited.

(*s*) S. 19 (5); 25 Statutes 495. The powers of the Minister under this section are very extensive; if he is satisfied having regard to this sub-section that the right to compensation shall be excluded then, except as provided for in sub-ss. (3) and (4), the person whose property may be affected by any of the conditions set out in sub-s. (1) has no remedy. There is no right of appeal from the Minister's decision that it is proper and reasonable to exclude compensation in these cases, and this is apparently not a ground on which the validity of a scheme may be contested (see First Schedule, Part II., para. 2; 25 Statutes 527). It is to be noted that the exclusion of compensation under s. 19 would not prevent a claim for recovery of betterment from owners under s. 21; 25 Statutes 497.

By sect. 20 (t) no compensation is to be payable under the Act in respect of any property on the ground that it has been injuriously affected by any provision contained in a scheme, if and in so far as the same provision or a provision substantially to the same effect was, at the date when the scheme came into operation, already in force otherwise than by virtue of the Act of 1932 or an Act repealed by that Act.

A person is not entitled to recover compensation under the Act in respect of any action taken by a responsible authority under sect. 13, except in a case where a building or work which the authority have removed, pulled down or altered was an existing building or an existing work, or a use of a building or land which they have prohibited was an existing use.

Where any provision contained in a scheme could, immediately before the date on which the scheme came into operation, have been validly included in a scheme, order, regulation or bye-law by virtue of any other Act in force at that date, then (a) if no compensation would have been payable in respect of injury caused by the coming into operation of that provision in that other scheme, or that order, regulation or bye-law, no compensation shall be payable in respect of that provision of the scheme under the Act; and (b) if compensation would have been so payable, the compensation payable in respect of that provision of the scheme under the Act is not to be greater than the compensation which would have been so payable.

Where any provision of a scheme, whether made under the Act or under any Act repealed by it, is revoked by a subsequent scheme, no compensation shall be payable in respect of any property on the ground that it has been injuriously affected by any provision contained in the subsequent scheme if and in so far as that later provision is the same, or substantially the same, as the earlier provision so revoked; but if at the date when the revocation of that earlier provision becomes operative (a) there is still outstanding any claim for compensation duly made thereunder; (b) the time originally limited for making such a claim has not expired, any such outstanding claim, and any such claim made within the time so limited, shall be entertained and determined and may be enforced, in the same manner in all respects as if all the provisions of the earlier scheme had continued in operation.

Sect. 46 (u) gives powers to enable the authority to prevent a ruthless destruction of trees. The section bears on the question of compensation in that the scheme may impose an obligation of replanting trees where a woodland is felled, for the expenditure incurred in which replanting the owner will be able to claim compensation as and when he is actually called upon to carry it out; as this may extend over a long period, it may involve a considerable extension of time for making claims for compensation. For purposes of this section, the Forestry Commissioners are the final tribunal.

Sect. 47 provides for the preservation of amenities of land by control of advertisements, and by sub-sect. (7) it is provided that property is not for the purposes of the provisions of this Act relating to compensation and betterment (w) to be deemed to be injuriously affected or increased in value by the provisions of this section or anything done or suffered thereunder. [787]

(t) 25 Statutes 496.

(u) *Ibid.*, 512.

(w) See the title BETTERMENT, Vol. II., p. 35.

ACQUISITION OF LAND TO WHICH SCHEME APPLIES (a)

The responsible authority may purchase by agreement any land to which a scheme, whether made under the Act or under any Act repealed by it (b), applies, which they may require for the purposes of the scheme as if those purposes were purposes of the P.H. Acts, 1875 to 1926 (c), and, where the responsible authority (d) are not a local authority for the purposes of those Acts, as if they were such an authority, and in particular, but without prejudice to the generality of the foregoing words, they may purchase any such land—

- (a) which they require for carrying out the improvement, or controlling the development, of frontages to or of lands abutting on or adjacent to (e) any highway which is repairable by the inhabitants at large, or any proposed highway which is to be constructed wholly or partly at the public expense ; or
- (b) which they require for securing the satisfactory development of any land in accordance with the provisions of the scheme in any case where, by reason of the land being held in plots which are of inconvenient size or shape or of which the arrangement or alignment is inconvenient, or by reason of the multiplicity of interests in the land, or by reason of the fact that the land is being used in a manner or for purposes inconsistent with the provisions of the scheme, it does not appear to be reasonably practicable to secure such development otherwise than by purchase of the land ; or
- (c) which forms the site of a highway which has been stopped up under any provision contained in the scheme ; or
- (d) which they require for the purpose of providing accommodation for a person whose premises have been purchased by them for the purposes of the scheme. [788]

Where the responsible authority are unable to purchase by agreement any land which they are authorised by sect. 25 to purchase, they may, subject as thereby provided, be authorised to purchase that land compulsorily by means of a compulsory purchase order made and submitted to the Minister and confirmed by him in accordance with the provisions of Part I. of the Third Schedule (f). But they may not be authorised so to purchase any land compulsorily for the purpose of sub-para. (d) (*supra*).

The provisions of Part III. of the First Schedule (g) to the Act are to have effect with respect to the validity of compulsory purchase

(a) See s. 25 ; 25 Statutes 502.

(b) See s. 52 (transitional provisions) ; *ibid.*, 519 ; and s. 54 (repeals) and Fifth Schedule ; *ibid.*, 535.

(c) For P.H. Acts, 1875 to 1926, see 13 Statutes 623 *et seq.*

(d) As to the expression "responsible authority," see s. 11 ; 25 Statutes 484, and in London, s. 50 ; *ibid.*, 516.

(e) In *Barnett v. Covell* (1903), 90 L. T. 29 ; 26 Digest 567, 2601, it was held that "abutting" means "in actual contact with." This case was distinguished in *Rockleys v. Pritchard* (1909), 101 L. T. 575 ; 26 Digest 567, 2602. See, further, *L.C.C. v. Collins* (1905), 98 L. T. 540 ; 26 Digest 511, 2156 ; *R. v. South Eastern Rail. Co.* (1910), 74 J. P. 187 ; 11 Digest 100, 55 ; *Stockport Corp'n. v. Rollinson* (1910), 74 J. P. 236 ; 26 Digest 567, 2603, and other cases in Lumley's Public Health, 10th ed., p. 320.

(f) Provisions as to the compulsory acquisition of land ; 25 Statutes 529.

(g) Provisions as to the validity and date of operation of compulsory purchase orders ; *ibid.*, 527.

orders made under the Act and the dates on which they are to come into operation. Where land within the district of a local authority is comprised in a scheme, whether made under the Act or under any Act repealed by it, and the local authority are not the responsible authority, the provisions of sect. 25 with respect to the purchase of land, whether by agreement or compulsorily, by a responsible authority are to apply to the local authority as if that authority were the responsible authority (*h*).

The responsible authority may, with the consent of and subject to any conditions imposed by the Minister, purchase by agreement land comprised in a scheme, whether made under the Act or under any Act repealed by it, notwithstanding that the land is not immediately required for the purposes of the scheme.

The powers of purchasing land under sect. 25 are subject to the restrictions contained in Part II. of the Third Schedule (*i*). [789]

The prudent promoters of a scheme will naturally so devise it that, while securing the utmost possible advantage to the township or district under consideration, they will also reduce the subjects of compensation to a minimum, and thereby keep any burden to be placed upon the local ratepayers to its smallest quantity. For this reason, in some cases, it may be possible to barter one parcel of land for another and thereby avoid compensation in money terms, or again agreement may be come to between the parties whereby compensation can be avoided by the betterment done to other lands of the same owner (*k*); agreement failing, the land required may be compulsorily acquired if an order is confirmed by the Minister applying the following statutes (*l*).

(a) The Lands Clauses Acts (except sects. 92 and 127—132 of the Lands Clauses Consolidation Act, 1845 (*m*));

(b) The Acquisition of Land (Assessment of Compensation) Act, 1919 (*n*); and

(c) Sects. 77—85 of the Railways Clauses Consolidation Act, 1845 (*o*).

(*h*) S. 25 (4); 25 Statutes 503.

(*i*) *Ibid.*, 531.

(*k*) No provision is made in the Lands Clauses Consolidation Act, 1845, for the application of the principle of set-off, and an attempt in 1863 to secure a recognition by the courts of that principle on an assessment of compensation was unsuccessful (*Senior v. Metropolitan Rail. Co.* (1863), 2 H. & C. 258; 11 Digest 147, 315. "If an individual has a portion of his land taken he is entitled to be paid for it. This is the first time such a question of set-off was ever mooted": *per WILDE, B.*, *ibid.*, at p. 269. See also *Eagle v. Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638; 11 Digest 144, 286; *South Eastern Rail. Co. v. L.C.C.*, [1915] 2 Ch. 252; 11 Digest 124, 156).

(*l*) S. 25 (2); 25 Statutes 503; and Third Schedule, Part I., *ibid.*, 529.

(*m*) 2 Statutes 1113:

S. 92. Parties not to be required to sell part of a house, etc.

127. Lands not wanted to be sold within ten years after expiration of time limited for completion of works or in default to vest in owners of adjoining lands.

S. 128. Lands not in a town or built upon, etc., to be offered to owner of lands from which they were originally taken or to adjoining owners.

S. 129. Rights of pre-emption to be claimed within six weeks from offer—Evidence of refusal, etc., to exercise right.

S. 130. Differences as to price to be settled by arbitration.

S. 131. Land to be conveyed to the purchasers.

S. 132. Effect of the word "grant" in conveyances.

(*n*) 2 Statutes 1176.

(*o*) 14 Statutes 61.

L.G.L. III.—23

The modifications, subject to which the Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919, apply are set out in Part I. of the Third Schedule (*p*), are as follows :

- (i.) The Arbitrator is not to take into account any building erected or any improvement or alteration made or any interest in land created after the date on which notice of the order having been made is published, if in his opinion the erection of the building, or the making of the improvement or alteration, or the creation of the interest in respect of which a claim is made, was not reasonably necessary and was carried out with a view to obtaining compensation or increased compensation.
- (ii.) No person is to be required to sell part only of any house, building or manufactory, or of any land which forms part of a park or garden belonging to a house, if he is willing and able to sell the whole of the house, building, manufactory, park or garden, unless the Arbitrator determines that in the case of a house, building or manufactory such part as is proposed to be taken can be taken without material detriment to the house, building or manufactory, or, in the case of a park or garden, that such part as aforesaid can be taken without seriously affecting the amenity or convenience of the house, and, if he so determines, he is to award compensation in respect of any loss due to the severance of the part so proposed to be taken in addition to the value of that part, and thereupon the party interested is to be required to sell to the responsible authority that part of the house, building, manufactory, park or garden.
- (iii.) Where the land to which the order relates is land forming the site of a highway which has been stopped up under a provision contained in a scheme, any compensation payable is to be assessed on the basis that the land could not lawfully be used in any manner which, if the highway had not been stopped up, would have interfered with the right of the public to use that highway ; and
- (iv.) Where any land to which an order relates is glebe land or other land belonging to an ecclesiastical benefice, the order is to provide that sums agreed upon or awarded for the purchase of the land or to be paid by way of compensation for damage to be sustained by reason of severance or injury affecting the land shall not be paid as directed by the Lands Clauses Act but shall be paid to the Ecclesiastical Commissioners, to be applied by them as money paid to them upon a sale under the provisions of the Ecclesiastical Leasing Acts of lands belonging to a benefice.

Sects. 6—15 of the Lands Clauses Consolidation Act, 1845 (*q*), relate to the purchase of lands by agreement, and the acquiring authority may enter into restrictive covenants so long as these do not prevent full use of the land for the purpose for which it is being acquired (*r*).

(*p*) 25 Statutes 529.

(*q*) 2 Statutes 1115.

(*r*) *Stourcliffe Estates Co., Ltd. v. Bournemouth Corpn.*, [1910] 2 Ch. 12 ; 11 Digest 120, 131.

These provisions are incorporated by sect. 25 of the Town and Country Planning Act, 1932, and empower the authority to agree with the owners for a consideration in money to acquire any estate or interest in their lands (s).

Parties under disability are enabled to sell, convey, and exercise other powers (t), and in such cases the amount of compensation for damage or injury (except where determined by the verdict of a jury, by arbitration or by the valuation of a surveyor appointed by two justices) is to be determined by the valuation of two able practical surveyors, one of whom is to be nominated by the authority and the other by the owner (other party), and in case these two surveyors cannot agree, a third surveyor, nominated after notice by two justices, shall adjudicate, and the sum adjudicated shall be deposited in the bank for the benefit of the parties interested (u).

Sect. 25 of the Act limits the acquisition of land to the purposes of the P.H. Acts, 1875 to 1926 (a). While the L.G.A., 1933 (b), allows a local authority to acquire land by agreement for the purposes of any of their functions, sect. 179 (g) of that Act and the Seventh Schedule (c) prevents any transaction being effected, under the Act of 1933, otherwise than under and in accordance with the Town and Country Planning Act, 1932, and sect. 25 of that Act is not, therefore, extended by the Act of 1933. [790]

RESTRICTIONS ON ACQUISITION OF LAND

By Part II. of the Third Schedule the Minister is not to confirm an order for the compulsory purchase of any land which is the site of an ancient monument (d) or other object of archaeological interest unless he is satisfied that the monument or object is not being properly protected, preserved and maintained and that its acquisition by the responsible authority is necessary for securing its protection or preservation and maintenance (e).

The Minister is not to confirm an order for the compulsory purchase of any land which belongs to any local authority within the meaning of the Local Loans Act, 1875 (f), or to any statutory undertakers (g), unless the land is required for the widening of an existing highway and the authority or undertakers consent.

(s) An easement or right of use sufficient for the requirements sanctioned may be purchased instead of the land itself (*Great Western Rail. Co. v. Swindon and Cheltenham Rail. Co.* (1884), 9 App. Cas. 787; 19 Digest 11, 14).

(t) Lands Clauses Consolidation Act, 1845, ss. 7, 8; 2 Statutes 1116.

(u) *Ibid.*, s. 9; *ibid.*, 1117. The section applies to compensation for injuriously affecting lands not taken by the promoters, as well as to compensation for taking lands, the words "injury to such lands" meaning injury to lands held by persons under disability (*Stone v. Yeovil Corpn.* (1876), 2 C. P. D. 99; 11 Digest 133, 206). The vendor cannot appoint himself to be one of the surveyors (*Peters v. Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429; 11 Digest 164, 418). A mandamus lies to compel the promoters to appoint a surveyor (*Baker v. Metropolitan Rail. Co.* (1862), 31 Beav. 504; 11 Digest 164, 424).

(a) 13 Statutes 623 *et seq.*

(b) S. 157; 26 Statutes 391.

(c) 26 Statutes 404, 509.

(d) For definition see Ancient Monuments Act, 1931; 24 Statutes 304.

(e) Third Schedule to Act, Part II.; 25 Statutes 531.

(f) S. 34; 12 Statutes 253.

(g) "Statutory undertakers" means any person authorised by or under an Act of Parliament or an order having the force of an Act of Parliament to construct, work or carry on any railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water or other public undertaking; see s. 53 of the Act.

Such consent is not to be unreasonably withheld, and any question whether or not consent is unreasonably withheld is to be decided by the Minister; but where any Government department other than the M. of H. are concerned with the functions of the undertakers, the Minister, before giving his decision as to whether or not the consent of any undertakers is unreasonably withheld, is to consult with the Secretary of State or other Minister in charge of that department, and shall, if the undertakers so desire, afford them an opportunity of appearing before and being heard by one or more persons appointed for the purpose by the Minister and the Secretary of State or other Minister acting jointly.

The Minister is not to confirm an order for the compulsory purchase of any land forming the site of a highway which has been stopped up under a provision contained in a scheme, if any person who, under sect. 128 of the Lands Clauses Consolidation Act, 1845 (*h*), is or would upon a disposition thereof be entitled to a right of pre-emption in respect of the land, has given notice of his desire to purchase the land, or if a right of pre-emption under the said section has been exercised in respect of the land. [791]

Where a scheme, or an order made in connection with a scheme, authorises the acquisition or appropriation of any land forming part of any common, open space or allotment the scheme or order so far as it relates to the acquisition or appropriation of such land, is to be provisional only and shall not have effect unless and until it is confirmed by Parliament except:

- (a) where the scheme provides for giving in exchange for such land other land, not being less in area, certified by the Minister after consultation with the Minister of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to rights of common or other rights and to the public; or
- (b) where such land is required for the widening of an existing highway and the Minister, after consultation with the Minister of Agriculture and Fisheries, declares that the giving in exchange of other land is unnecessary either in the interests of the persons, if any, entitled to rights of common or other rights, or of the public.

Before giving any such certificate or making any such declaration, the Minister is to give public notice of the proposed exchange or of his intention to make the declaration, and shall afford opportunity to all persons interested to make representations and objections in relation thereto, and shall, if necessary, cause a local inquiry to be held on the subject (*i*). [792]

Where any scheme authorises such an exchange as aforesaid it is to provide for vesting the land given in exchange in the persons in whom the common, open space or allotment was vested, subject to the same rights, trusts and incidents as attached to the common, open space or allotment, and for discharging the part of the common, open space or allotment acquired or appropriated from all rights, trusts and incidents to which it was previously subject.

For the above purposes (Third Schedule, Part II.) the expression

(*h*) Lands not in a town or built upon, etc., to be offered to owner of lands from which they were originally taken or to adjoining owners; 2 Statutes 1159.

(*i*) Third Schedule, Part II., para. 4; 25 Statutes 532.

"common" includes any land subject to be enclosed under the Inclosure Acts, 1845 to 1882 (*h*), and any town or village green. The expression "open space" means any land laid out as a public garden or used for the purposes of public recreation and any disused burial ground. And the expression "allotment" means any allotment set out as a fuel or a field garden allotment (*l*) under an Inclosure Act, and the expression "highway" in para. 2 of the Schedule is not to include a bridge by which a highway is carried over or under any railway, canal or navigable waterway, or the approaches to any such bridge, or the road carried by any such bridge and approaches. [793]

TIME AND MODE FOR MAKING CLAIM FOR COMPENSATION

It is provided by sect. 22 that a claim for compensation is to be made by serving upon the authority a notice in writing stating the grounds of the claim and the amount claimed. It is to be made to the responsible authority, who is to be specified in the scheme (*m*), and who may be either the local authority within whose district any land to which the scheme applies or any neighbouring land is situate; a county council; a joint body specially constituted by the scheme and incorporated in accordance with sect. 11 (3); or any two or more of such authorities specified as the responsible authorities for different purposes of the scheme or as respects different parts of the area (*n*). If, however, the claim arises out of the coming into operation of an order for the preservation of particular buildings under sect. 17 of the Act, it must be made against the council by whom the order was made (*o*).

It may be made within twelve months after the date on which the provision giving rise to the claim came into operation (*p*), or within such longer period as may be specified in the scheme (*q*), or, if the claim for compensation is (1) in respect of action taken by the authority under sect. 13 of the Act (power to enforce and carry into effect schemes), or (2) in respect of the coming into operation of an order under sect. 17 (power to make orders for preservation of certain buildings), or (3) in respect of expenditure rendered abortive (*r*) by the variation or revocation of a scheme, within twelve months after the date on which the action was completed, or the order came into operation, or the variation or revocation of the scheme became operative (*s*). [794]

Where it is alleged that land which, at or within two years before the material date (*t*), formed the site of a building, has been injuriously affected by a provision fixing, in relation to any street or proposed street, a line beyond which no building (*u*) in that street or proposed

(*h*) For the Inclosure Acts, 1845 to 1882, see 2 Statutes 443 *et seq.*

(*l*) As to these kinds of allotments, see title ALLOTMENTS, Vol. I., pp. 225, 226.

(*m*) S. 11 (1); 25 Statutes 484.

(*n*) S. 11 (2); *ibid.*, 485.

(*o*) S. 18 (1); *ibid.*, 492.

(*p*) For date of coming into operation, see s. 8 (approval, validity, coming into effect, variation and revocation of schemes) and s. 14 (supplementary orders); 25 Statutes 480, 488.

(*q*) As to claims made under earlier Acts, see s. 54 (1) (b); *ibid.*, 522.

(*r*) S. 18 (1) (c); *ibid.*, 492.

(*s*) S. 22 (1), (2); *ibid.*, 500.

(*t*) For definition of "material date," see s. 53; *ibid.*, 521.

(*u*) Building includes structure or erection (*ibid.*).

street may project, then, subject to any agreement to the contrary, the period within which a claim for compensation may be made in respect of that land shall be a period of twelve months after the date on which a new building is erected on the site in conformity with the line so fixed.

Provided that, if in the case of any such land a claimant (1) alleges in his claim, and (2) proves to the satisfaction of the arbitrator, that it is not reasonably practicable to erect any new building on that land in conformity with the line so fixed, and (3) where the building is standing at the date on which the scheme comes into operation, has before commencing to demolish the building given notice to the responsible authority in accordance with the provisions of sect. 22 (4), a claim made by him at any time within a period of twelve months after the date on which the building is demolished, or the date on which the scheme comes into operation, whichever shall last happen, shall be deemed to be validly made and shall be entertained by the arbitrator. [795]

Sub-sect. (4) provides that a person who intends to claim compensation in respect of any such land as is mentioned above shall, if the building is standing at the date on which the scheme comes into operation, give notice in writing, not less than three months before he commences to demolish the building, of his said intention to the responsible authority, who may, within two months of receipt of the notice, require him to sell to them the site and the buildings thereon, and thereupon the provisions of the Act with respect to the compulsory acquisition of land by a responsible authority (a) shall apply in relation to that site, and any buildings thereon, as they apply in relation to land required by such an authority for the purposes of a scheme.

Where it is alleged that property has been injuriously affected by the execution of any work, the period within which a claim in respect of that injurious affection may be made shall be a period of twelve months after the completion of the work (b). [796]

RULES FOR THE ASSESSMENT OF COMPENSATION

Where compensation is claimed under sect. 18 of the Act, the measure is the amount by which the property is decreased in value by reason of the injurious affection, damage or abortive expenditure complained of (c), plus, where a trade, business or profession has been carried on upon the property, the amount either of any resulting injury to that trade, business or profession, the damage suffered, or, so far as it was reasonably incurred, the abortive expenditure (d). The amount may be increased if any additional injurious affection arises to the property by the Minister of Health refusing, on appeal made to him on an interim development order (e) after the commencement of the Act, to grant an application for permission to develop the property, or imposing any conditions on the grant of such an application made since that date (f). It should, however, be noted that no compensation is payable if the provisions in a scheme which cause or result in

(a) See s. 25 (25 Statutes 502), First Schedule, Part III. (*ibid.*, 527), and Third Schedule, Part I. (*ibid.*, 529).

(b) S. 22 (5); *ibid.*, 500.

(c) See *ante*, p. 341.

(d) S. 18 (1); 25 Statutes 492.

(e) Under s. 10 (*ibid.*, 482); and see S.R. & O., 1933, No. 236, paras. 4, 5, 6.

(f) S. 18 (2); 25 Statutes 492.

damage are similar to provisions already in force under some earlier statute (*g*).

Where compensation is claimed for compulsory acquisition of land under sect. 25 and the Third Schedule to the Act, it is assessed under the provisions of three incorporated statutes: the Lands Clauses Acts (*h*), except sects. 92 and 127—132 of the Lands Clauses Consolidation Act, 1845; the Acquisition of Land (Assessment of Compensation) Act, 1919 (*i*); and sects. 77—85 of the Railways Clauses Consolidation Act, 1845 (*k*).

As the Acquisition of Land (Assessment of Compensation) Act, 1919, is included, the land in respect of the compulsory acquisition of which compensation is claimed includes water and any interests in land or water, and any easement or right in, to, or over land or water, *e.g.* it would include the laying of a sewer or water main through land. This Act only applies to compulsory purchase, and not to cases where the contract for sale and purchase is arrived at by agreement, even if the agreement takes the form of a statutory bargain embodied in a special Act. In dealing with cases under the 1932 Act, therefore, the provisions as to compensation for compulsory purchase would not apply to cases where land, to which a scheme whether made under the Act or under any Act repealed by it applies and which is required by the local authority for the purposes of that scheme, is acquired by agreement under sect. 25 of the Act. [797]

The Act of 1919 applies also to questions of compensation and betterment arising under the Town Planning Act, 1925, sect. 10, which, although repealed, continues to be of importance in so far as claims made under it, or within the time limited by it, are expressly saved by the Act of 1932. Rules regulating the determination of questions as to compensation under this Act were made by the Reference Committee (*m*), the most important of which are the following:

(1) The expression "question" in rule 2 of the Acquisition of Land (Assessment of Compensation) Rules, 1919, are to include any question which by virtue of sect. 10 of the repealed Town Planning Act, 1925, is to be determined by arbitration under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919 (in these rules referred to as "a question relating to compensation under a town planning scheme").

(2) References in the rules of 1919 to the acquiring authority and to the claimant shall respectively mean the responsible authority mentioned in sect. 10 of the Town Planning Act, 1925, and the person whose property is alleged to have been injuriously affected or increased in value by the scheme and by or against whom a claim has accordingly been made under that section, and the expression "claim" shall mean a claim under that section.

(3) Application for the selection of an arbitrator is to be sent to the reference committee within fourteen days of the date of the claim. [798]

Under the Acquisition of Land (Assessment of Compensation) Act, 1919 (*n*), power is given to refer any question of disputed compensation (or apportionment of rent) to an arbitrator agreed on between the

(*g*) S. 20 (1), *supra*; 25 Statutes 496.

(*i*) *Ibid.*, 1176.

(*m*) S.R. & O., 1926, No. 439/L.9.

(*h*) 2 Statutes 1113.

(*k*) 14 Statutes 61.

(*n*) 2 Statutes 1176.

parties (*o*) or to an official arbitrator selected from a panel and paid by the Treasury; its purpose aims at limiting the cost of compensation proceedings and its procedure varies considerably from that of the Lands Clauses (Consolidation) Acts (*p*); where notices to treat have been served for the acquisition of the several interests in the land to be acquired the claims of the persons entitled to such interests are, so far as practicable, and so far as not agreed, and if the promoters desire heard and determined by the same official arbitrator (*q*). In such circumstances the promoters may apply to the Reference Committee (*r*) to have the same person selected as the arbitrator to determine all the claims to which the application relates (*s*), and if the application is granted the promoters then apply to the arbitrator so selected for an order that all the claims shall be heard together (*t*), and the arbitrator after taking into consideration any objections made to the application, makes such order as he thinks proper in the circumstances (*u*).

Thus the order for consolidation may be made with respect to some only of the claims and may be made subject to such directions as to costs, witnesses, method of procedure or otherwise as the arbitrator thinks proper (*a*).

Where a question of disputed compensation is referred to an arbitrator agreed on between the parties instead of to an official arbitrator, the provisions referred to above apply, except those relating to the consolidation of proceedings and the fixing of fees by the Treasury (*b*). [799]

In assessing compensation an official arbitrator must act in accordance with the following rules (*c*):

1. No allowance shall be made on account of the acquisition being compulsory (*d*).

2. The value of land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, might be expected to realise; Provided always that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant.

(*o*) Acquisition of Land (Assessment of Compensation) Act, 1919, s. 8; 2 Statutes 1181.

(*p*) See titles COMPENSATION ON ACQUISITION OF LAND and COMPULSORY PURCHASE OF LAND.

(*q*) Acquisition of Land (Assessment of Compensation) Act, 1919, s. 4; 2 Statutes 1179.

(*r*) *Ibid.*, s. 1 (5); *ibid.*, 1177.

(*s*) Acquisition of Land (Assessment of Compensation) Rules, 1919 (S.R. & O., 1919, No. 1836), r. 7 (1). The application may be made on the application for the selection of an official arbitrator, or at any time thereafter, so long as the arbitrator has not already entered on the consideration of the claim in respect of which the application is made (*ibid.*).

(*t*) *Ibid.*, r. 7 (4). Notice of intention to apply specifying the date on which and the place at which the arbitrator will hear objections, must be sent to each claimant (*ibid.*, r. 7 (5)), and any claimant who objects must within seven days after receipt of the notice send notice of his objection to the promoters and the arbitrator (*ibid.*, r. 7 (6)).

(*u*) *Ibid.*, r. 7 (7).

(*a*) *Ibid.*, r. 7 (8).

(*b*) Under the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 3 (5); 2 Statutes 1179, an official arbitrator sits in public.

(*c*) *Ibid.*, s. 2; *ibid.*, 1178.

(*d*) Cf. Small Holdings and Allotments Act, 1908, s. 39 (5); 1 Statutes 267, which contains a similar provision in contradistinction to the practice obtaining under the Lands Clauses Consolidation Acts (2 Statutes 1118).

3. The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers (*e*), or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department (*f*) or any local or public authority. Provided that any *bona fide* offer for the purchase of the land made before the passing of the Act which may be brought to the notice of the arbitrator shall be taken into consideration. Apart from this rule and in the ordinary event, the natural adaptability of land to be acquired under statutory powers for the purpose for which it is so acquired, is a proper matter for consideration as an element of value, which can only be excluded if it can be shown on the facts that there is no reasonable possibility of a market for the land apart from the particular scheme under which it is taken (*g*). The arbitrator ought to take into consideration any *bona fide* offer for the purchase of the land made before the coming into operation of the compulsory purchase order and brought to his notice, even though the offer resulted in an agreement which subsequently, from any cause, became null and void (*h*). To be good as an offer for this purpose, it must have been made in respect of the same subject-matter in the same state of affairs as in the claim (*i*). It must be made at a time which will enable the claimant to make up his mind, before he has incurred any substantial expense, whether or not he will accept it (*k*), and must be one of nothing more than a sum of money. It must be an unconditional offer of compensation for the injury, and is bad if it be an offer of one sum for compensation and costs (*l*).

4. Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account.

5. Where land is and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no

(*e*) This appears to exclude the doctrine of *Re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16; 11 Digest 127, 169.

(*f*) As to "Government department," see *Defence of the Realm (Acquisition of Land) Act*, 1916, s. 12 (*3*); 2 Statutes 1175.

(*g*) *Re Gough and Aspatria, Silloth and District Joint Water Board*, [1904] 1 K. B. 417; 11 Digest 127, 168.

(*h*) *Percival v. Peterborough Corpn.*, [1921] 1 K. B. 414; 11 Digest 128, 173.

(*i*) *Fisher v. Great Western Rail. Co.*, [1911] 1 K. B. 551; 11 Digest 200, 790, where a company in exercise of powers under a private Act had constructed a bridge and diverted a footpath which crossed the claimant's land. When a claim was formulated, the company replied, "The road will be made as soon as practicable, and on the understanding that it will be made we make your client an offer of £50 in settlement of his claim." The offer was refused, and in arbitration after the road was made the claimant was awarded £50; he claimed to recover his costs and the Court of Appeal upheld the claim, holding that the letter was not a good offer; when it was written the road had not been formed; when the arbitrator awarded £50 it had been formed; the arbitration was, therefore, in respect of a different subject-matter in a different state of affairs from that which existed at the date of the offer. See also *Miles v. Great Western Rail. Co.*, [1896] 2 Q. B. 432; 11 Digest 200, 797.

(*k*) *Fisher v. Great Western Rail. Co.*, *supra*, per Lord ALVERSTONE, C.J. See also *Fitzhardinge v. Gloucester and Berkeley Canal Co.* (1872), L. R. 7 Q. B. 776; 11 Digest 200, 793; *Gray v. North Eastern Rail. Co.* (1876), 1 Q. B. D. 696; 11 Digest 200, 794.

(*l*) *Balls v. Metropolitan Board of Works* (1866), L. R. 1 Q. B. 337; 11 Digest 210, 936.

general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is *bona fide* intended, be assessed on the basis of the reasonable cost of equivalent reinstatement (*m*).

6. The provisions of rule 2 (*supra*) will not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land (*n*). [800]

If an offer (*o*) of compensation has been made by the promoters to a claimant and the sum awarded to the claimant by the arbitrator, whether an official arbitrator or one agreed upon between the parties (*p*), does not exceed the sum offered, the arbitrator must, unless for special reasons he thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the promoters so far as such costs were incurred after the offer was made (*q*).

If a claimant fails to deliver to the promoters a notice of the amount claimed by him giving sufficient particulars (*r*) and in sufficient time to enable the promoters to make a proper offer the foregoing provisions apply as if an unconditional offer (*s*) had been made by the promoters at the time when sufficient particulars should have been furnished and the claimant had been awarded a sum not exceeding the amount of such offer (*t*).

Where the claimant has made an unconditional offer in writing to accept any sum as compensation (*u*) and has complied with the pro-

(*m*) Where land is used for some particular purpose not of a commercial nature such as a public park, church or school it is difficult to estimate the loss. By reinstatement the amount of compensation would be assessed according to the cost of acquiring an equally convenient site and erecting thereon equally commodious premises; the principle would seem to be only applicable where convenient land is available and can be obtained on reasonable terms. See *London School Board v. South Eastern Rail. Co.* (1887), 3 T. L. R. 710; 11 Digest 129, 179; *Metropolitan and District Rail. Co. v. Burrow* (1884), Hudson's Compensation, Vol. 2, 1521, H. L.; 11 Digest 129, 178; and cf. *A. and B. Taxis, Ltd. v. Secretary of State for Air*, [1922] 2 K. B. 328; Digest (Supp.).

(*n*) Rule 6 appears to contemplate the payment of compensation under any heading that can reasonably be put forward for consideration apart from disturbance. Cf. Landlord and Tenant Act, 1927; 10 Statutes 375; and cf. compensation for disturbance under the Agricultural Holdings Act, 1923, s. 12; 1 Statutes 86.

(*o*) The offer must be unconditional and in writing (Acquisition of Land (Assessment of Compensation) Act, 1919, s. 5 (1); 2 Statutes 1179).

(*p*) *Ibid.*, s. 8 (3); *ibid.*, 1182.

(*q*) *Ibid.*, s. 5 (1); *ibid.*, 1179. Where the claimant has been ordered to pay the costs or any part thereof of the promoters, they may deduct the amount so payable by the claimant from the amount of compensation payable to him (*ibid.*, s. 5 (6); *ibid.*, 1180).

(*r*) The notice must be in writing and must state the exact nature of the interests in respect of which compensation is claimed and give details of the compensation claimed. The promoters may at any time within six weeks after delivery of such notice of claim withdraw any notice to treat which has been served on the claimant or any other person interested in the land authorised to be acquired, but the promoters are liable to pay compensation for any loss or expenses occasioned by the giving and withdrawal of the notice to treat, the amount of such compensation being determined in default of agreement by an official arbitrator (*ibid.*, s. 5 (2); *ibid.*, 1179).

(*s*) As to meaning of "unconditional offer," see *Gould v. Staffordshire Potteries Waterworks Co.* (1850), 5 Exch. 214; 11 Digest 199, 778; *Fisher v. Great Western Rail. Co.*, [1911] 1 K. B. 551; 11 Digest 200, 790; *Miles v. Great Western Rail. Co.*, [1896] 2 Q. B. 432; 11 Digest 200, 797.

(*t*) Acquisition of Land (Assessment of Compensation) Act, 1919, s. 5 (2); 2 Statutes 1179.

(*u*) Compensation should include the whole value of the claimant's proprietary

visions as to notice of claim and the sum awarded is equal to or exceeds that sum, the arbitrator must, unless for special reasons he thinks proper not to do so, order the promoters to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made (a). [801]

In any proceedings before an official arbitrator not more than one expert witness on either side shall be heard unless the arbitrator otherwise directs (b). Provided that where the claim includes a claim for compensation in respect of minerals or disturbance of business as well as in respect of land, one additional expert witness on either side on the value of minerals or, as the case may be, on the damage suffered by reason of the disturbance may be allowed (c).

The arbitrator, whether official or one agreed upon by the parties, may himself tax the amount of costs ordered to be paid or may direct in what manner they are to be taxed (d), and without prejudice to any other method of recovery the amount of costs ordered to be paid by a claimant, or such part thereof as is not covered by deductions from the amount of compensation payable to him, may be recovered from him by the promoters summarily as a civil debt (e). [802]

THE TRIBUNAL FOR COMPENSATION

1. Any question arising under the Act of 1932 as to (f)—

- (i.) the right of a claimant to recover compensation ;
- (ii.) the right of an authority to recover any amount in respect of an increase in the value of any property ; or
- (iii.) the amount and manner of payment, whether immediately or by instalments spread over a period not exceeding thirty years, of any such recoverable compensation or amount as aforesaid,

shall, unless the authority and all persons concerned otherwise agree, be referred to and determined by an official arbitrator to be appointed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, who shall have the like powers with respect to procedure (including the hearing of claims and objections together), costs and the statement of special cases as he has under that Act.

interest ; it should not be limited to the amount of pecuniary benefits obtained by past user in disregard of possible benefits in the future (*Trent-Stoughton v. Barbados Water Supply Co.*, [1893] A. C. 502 ; 43 Digest 1069, k ; *Cedar Rapids Manufacturing and Power Co. v. Lacoste*, [1914] A. C. 569 ; 11 Digest 130, 187). Thus land which is potential building land, although meanwhile used for agricultural purposes, must be valued with regard to its potential value (*R. v. Brown* (1867), L. R. 2 Q. B. 630 ; 11 Digest 125, 160).

(a) Acquisition of Land (Assessment of Compensation) Act, 1919, s. 5 (3) ; 2 Statutes 1180.

(b) The arbitrator's discretion is wide, but it must be exercised judicially. See *Gray v. Ashburton (Lord)*, [1917] A. C. 26 ; 2 Digest 585, 2187.

(c) Acquisition of Land (Assessment of Compensation) Act, 1919, s. 3 ; 2 Statutes 1179.

(d) *Ibid.*, s. 5 (5) ; *ibid.*, 1180. There is nothing in this sub-section to prevent the arbitrator from awarding a lump sum for costs. *Bradshaw v. Air Council*, [1926] Ch. 329 ; Digest (Supp.).

(e) *Ibid.*, s. 5 (7) ; 2 Statutes 1180.

(f) S. 23 ; 25 Statutes 501.

2. The arbitrator or other person charged with the duty of determining any such question as aforesaid (i.) shall have regard to any undertaking which either the local authority or joint committee by whom the scheme was prepared, or the responsible authority, or a county council, or the person against whom the claim is made, may have given; and (ii.) if the question arises out of the coming into operation of a supplementary scheme or a supplementary order, shall take into account any amount which the responsible authority have paid or are liable to pay, or have recovered or are entitled to recover, in respect of that property by reason of the coming into operation of the original scheme, or any other scheme or order supplemental thereto; and (iii.) if any contribution has been made by an authority under the provisions of the Act of 1932 relating to interim development orders, shall take into account that contribution (g).

3. Any amount due as compensation from a responsible authority and any amount due to an authority from a person whose property is increased in value may be recovered summarily as a civil debt (h).

Subject to the provisions of sect. 24 of the Act, which empower an authority to withdraw or modify provisions of a scheme after an award of compensation has been made, the decision of an official arbitrator upon any question of fact shall be final and binding on the parties and others claiming under them respectively, but the official arbitrator may, and shall if the High Court so directs, state at any stage of the proceedings (i), in the form of a special case for the opinion of the High Court, any question of law arising in the course of the proceedings and may state his award as to the whole or part thereof in the form of a special case for the opinion of the High Court. The decision of the High Court upon any case so stated shall be final and conclusive and shall not be subject to appeal to any other court (k). [803]

Certain matters which are not strictly compensation incidents are referred by the Act to a court of summary jurisdiction; these include (a) provisions in schemes with respect to buildings and building operations (l), (b) power to enforce and carry into effect schemes (m), (c) powers with respect to advertisements (n).

Where an appeal lies or an application may be made to such a court the parties may agree in writing that the matter in dispute shall be determined by the Minister, or by such person as may be agreed upon, or in default of agreement appointed by the Minister (o).

Certain other matters which are likewise not strictly compensation

(g) S. 23 (2); 25 Statutes 501.

(h) As to recovery of a civil debt, see Summary Jurisdiction Act, 1879, s. 35; 11 Statutes 342. See also ss. 18 (1) (injury to trade, business or profession); 18 (2) (additional injurious affection due to Minister refusing to allow interim development or imposing conditions to be taken into account); 20 (compensation excluded or limited in certain cases).

(i) As to the meaning of "at any stage of the proceedings," see *Tabernacle Permanent Building Society v. Knight*, [1892] A. C. 293; 2 Digest 390, 503. As to arbitrators' refusal to state a case, see *Re Palmer & Co. and Hosken & Co.*, [1898] 1 Q. B. 131; 2 Digest 456, 1037. Note a special case must be entered in the Crown paper (*Hewitt v. Essex County Council*, [1927] 97 L. J. (K. B.) 249; Digest (Supp.); as applied by s. 23 (1) of the Act of 1932. See also Arbitration Act, 1889, ss. 7, 19; 1 Statutes 457, 462).

(k) Acquisition of Land (Assessment of Compensation) Act, 1919, s. 6; 2 Statutes 1180.

(l) Town and Country Planning Act, 1932, s. 12 (1); 25 Statutes 485.

(m) S. 13 (4), (5); *ibid.*, 487.

(n) S. 47 (2), (3); *ibid.*, 513.

(o) S. 40 (1); *ibid.*, 510.

incidents but may be closely bound up with them are referable to the Minister on appeal. Among these are :

(a) Where under an interim development order an application for permission to erect buildings is refused or partially granted (and in this case the authority has power to offer a prompt monetary compensation) the owner may within twenty-eight days appeal to the Minister and may on request being made be heard by the nominee of the Minister ; the decision of the Minister is final and has effect as if it were a decision of the authority (*p*), and abortive expenditure is recoverable (*q*).

(b) Under a general development order building operations may be permitted as approved by the Minister and a failure of the responsible authority (*r*) in this respect gives opportunity for appeal to the Minister.

(c) Where an owner desires to commence upon land building operations which may contravene temporary prohibitions or restrictions placed upon it he may apply for permission, and the authority must consider not only public advantage but also injury to the applicant in deciding the application ; appeal in such cases is to the Minister and is final as if it were a decision of the authority (*s*).

(d) Where an authority makes an order with respect to a building of special architectural or historic interest for its retention, the order is not to take effect until it has been approved by the Minister, who, before giving his approval, is to consider any representations made to him by the owner. The owner may appeal to the Minister subsequently against a refusal of the authority to vary or revoke the order (*t*).

In the above cases, the persons who would be parties to the appeal or between whom questions are raised may agree in writing that the matter in dispute shall be referred to the arbitration of such person as may be agreed upon or in default of agreement appointed by the Minister (*u*).

Where any such agreement as aforesaid is made, the Minister or the arbitrator, as the case may be, has power to make any such order or determination as in the absence of such agreement might have been made by a court of summary jurisdiction or by the Minister (*a*).

A determination of the Minister under sect. 40 shall be final and the parties to an arbitration under this section may, before entering on the reference, agree in writing that the award of the arbitrator shall be final on all questions whether in law or fact, and where any such agreement is made the provisions of the Arbitration Act, 1889 (*b*), as to the power of an arbitrator to state in the form of a special case an award (*c*) on any question of law arising in the course of a reference shall not apply. [804]

A person aggrieved by the decision of a court of summary jurisdiction in any case where such court has a jurisdiction under the Act or any scheme made thereunder may appeal to quarter sessions and for the purposes of such an appeal any such decision shall be deemed to be an order of a court of summary jurisdiction (*d*).

These appeals refer chiefly to sects. 12 (1), 13 (4), (5), 47 (2), (3) (*e*),

(*p*) S. 10 (5) ; 25 Statutes 483.

(*r*) See s. 11 ; *ibid.*

(*t*) S. 17 ; *ibid.*, 490.

(*a*) S. 40 (3) ; *ibid.*

(*c*) Ss. 7 (b), 19 ; *ibid.*, 457, 462.

(*d*) S. 39 ; 25 Statutes 510. Note that sub-s. (2) is repealed by the S.J. (Appeals) Act, 1933, s. 31 of which requires notice of an appeal to be given within fourteen days after the decision.

(*e*) 25 Statutes 485, 487, 513.

(*q*) S. 10 (7) ; *ibid.*, 484.

(*s*) S. 16 ; *ibid.*, 489.

(*u*) S. 40 (2) ; *ibid.*, 510.

(*b*) 1 Statutes 451.

and they are only related to the strict matter of compensation in so far that after notice of appeal to quarter sessions the parties may by order of a judge of King's Bench submit to an award or umpirage (*f*). [805]

MODIFICATION OF SCHEME AFTER AWARD

The responsible authority may at any time within one month after the date of an award of compensation under the Act in respect of the "injurious affection" of any property give notice to the claimant of their intention to withdraw or modify all or any of the provisions of the scheme which gave rise to his claim for compensation (*g*).

Where such a notice has been given the responsible authority shall within three months from the date of the notice submit for the approval of the Minister a varying scheme carrying into effect such withdrawal or modification as aforesaid, and upon the varying scheme as approved by the Minister, with or without modifications, coming into operation, and upon payment by the authority of the claimant's costs of and in connection with the arbitration, the award of the arbitrator shall be discharged, without prejudice, however, to the right of the claimant to make a further claim for compensation under the Act (*h*) or in respect of the scheme as varied.

No award of compensation under the Act in respect of the injurious affection of any property shall be enforceable before the expiration of one month from the date thereof, or if a notice has been given by the authority (*i*), until after the expiration of three months from the date of the notice, or if within that period a varying scheme is submitted to the Minister, until that scheme has either come into operation or been disapproved by the Minister or quashed by a court (*k*). [806]

LONDON

The modifications made in the application to London of the Act of 1932, will be found in sect. 50 of the Act (*l*). See also the title LONDON TOWN PLANNING. [806A]

(*f*) Quarter Sessions Act, 1849, s. 12; 11 Statutes 296.

(*g*) Town and Country Planning Act, 1932, s. 24 (1); 25 Statutes 501.

(*h*) S. 18 (1) (c); 25 Statutes 492, under which any person who, for the purpose of complying with any provision contained in a scheme or in making or resisting a claim under the provisions of the Act relating to compensation and betterment, has incurred expenditure which is rendered abortive by a subsequent variation or revocation of the scheme may make a claim in respect thereof.

(*i*) Under s. 24 (1), *supra*.

(*k*) The Acquisition of Land (Assessment of Compensation) Act (*supra*) makes special provision as to costs, but s. 24 (2) would appear to entitle a claimant to costs of the arbitration if the scheme is varied notwithstanding that an arbitrator may have in his award deprived claimant of his costs.

(*l*) 25 Statutes 516.

COMPENSATION ON ACQUISITION OF LAND

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See also titles : COMPENSATION FOR TOWN PLANNING ;
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PRELIMINARY OBSERVATIONS

The acquisition of land for the purpose of undertakings which local authorities and others are authorised by statute to establish, and the injurious affection of land not acquired for the purpose of such undertakings, frequently involve the purchasers in heavy claims by landowners for compensation. The expression "the law of compensation" is generally used by lawyers to denote that branch of the law which governs the payment of compensation in such cases.

In this title, the provisions as to compensation which govern cases in which local authorities and other bodies are authorised to acquire or interfere with land or rights or interests in land, are dealt with (a).

The right to such compensation is entirely statutory. When an Act of Parliament authorises promoters to carry out some undertaking, private rights and the property of individuals will usually be interfered with or damaged in the course of the work. If the undertaking had not

(a) For instances where local authorities are empowered to acquire land without payment of compensation, see title COMPULSORY PURCHASE OF LAND. Compensation for damage to land caused by the exercise by a local authority of powers given by the P.H. Acts is dealt with in the title DAMAGE, COMPENSATION FOR.

been sanctioned by the Legislature, it could not in many cases be carried out; for the owners of suitable land might either decline to sell it, or demand a prohibitive price; and even if the promoters already owned or could acquire by agreement the land necessary for the undertaking, their powers as ordinary landowners would frequently not suffice to enable them to carry on their undertaking if adjoining landowners objected. If their operations, for instance, caused a nuisance, an adjoining owner might obtain an injunction against them, or might, by virtue of his common law right, recover damages for any injury caused to his property. Where, however, the Legislature authorises an undertaking, it impliedly, if not expressly, abrogates the common law rights of individuals so far as is necessary for the carrying out of the authorised works in the authorised manner. If a statute authorises the taking of land compulsorily, the owner cannot refuse to sell it, nor, so long as the prescribed procedure is followed, can he sue for trespass, or even for the price of his land. Again, if the authorised work must necessarily be a nuisance to adjoining owners, or injure their property, such owners cannot, in the absence of special provisions, avail themselves of their ordinary rights to claim an injunction or damages. [807]

To meet the hardship which would thus be inflicted on individuals by undertakings for the benefit of the public in general, it is the practice of the Legislature to provide for the payment of compensation to those whose common law rights are thus taken away, and where the Legislature authorises interference with private rights in land it is not to be presumed that it is their intention to take away such rights without compensation (*b*), though a right to compensation cannot be implied in the total absence of any indication of an intention to grant it. [808]

Where land is acquired for the purpose of some public undertaking authorised by statute, or by a provisional or other statutory order duly made and confirmed, when confirmation is necessary, compensation generally becomes payable under two heads: (i.) Compensation to the owner of the land or of any interest in land actually acquired, or in other words, the purchase price of the land or interest; (ii.) Compensation to the owner of land or of an interest in land which, though not actually acquired for the purposes of or in connection with the undertaking, is yet "injuriously affected." [809]

Cases of injurious affection must again be divided into: (a) those where one portion of land has been acquired and another portion belonging to the same owner and held together with it, has been injuriously affected; and (b) those where land has been injuriously affected, but no other land of the same owner held together with it has been acquired. [810]

The general principles governing the assessment of compensation are based upon the provisions of the Lands Clauses Consolidation Act, 1845 (*c*). Those principles, so far as they relate to the taking of land, and the apportionment of rent where part only of leasehold premises is taken, are modified by the Acquisition of Land (Assessment of Compensation) Act, 1919 (*d*), where land is authorised to be acquired compulsorily by any Government department or local or public

(b) *Public Works Commissioners (Cape Colony) v. Logan*, [1903] A. C. 355; 11 Digest 109, *k*; and see *Central Control Board (Liquor Traffic) v. Cannon Brewery Co.*, *Ltd.*, [1919] A. C. 744, per Lord ATKINSON, at p. 752; 11 Digest 548, 512.

(c) 2 Statutes 1113.

(d) *Ibid.*, 1176. See, further, the title COMPULSORY PURCHASE OF LAND.

authority (e). In so far, however, as the principles in the Act of 1845 are not modified by the Act of 1919, those principles are the same in their application to all classes of statutory undertakers. The principles governing compensation for injurious affection of land by the execution of the authorised works are the same in all cases. [811]

COMPENSATION IN RESPECT OF ACQUISITION OF LAND

Basis of Assessment.—The compensation to be paid for the taking of land apart from compensation payable for injurious affection, is to be the value of the interest of the owner in the land taken, as at the date of the notice to treat (f).

The value to be ascertained is the value to the vendor, not the value to the purchaser (g). [812]

In cases where the Acquisition of Land (Assessment of Compensation) Act, 1919, applies, the value of the land must be taken, subject to the conditions later referred to, as the amount which the land, if sold in the open market by a willing seller might be expected to realise, but this rule is not to affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land (h). [813]

In all cases the existence of restrictions limiting the user of the land in the hands of the vendor are to be taken into consideration, though the possibility of any such restriction being removed for his benefit may be considered (i). The fact that restrictions may not affect the land in the hands of the purchaser is not to be taken to enhance the value (k). [814]

Where land is taken which is subject to a covenant beneficial to the owner, as for example, where there is a lease with a covenant by the tenant not to sell on the premises any beer other than that purchased of the owner, the owner is entitled to have taken into consideration the additional value of the premises arising from the existence of the covenant (l). [815]

The fact that premises are licensed for the sale of liquor enhances

(e) The expression "public authority" means any body of persons, not trading for profit, authorised by or under any Act to carry on a railway, canal, dock, water or other public undertaking (s. 12 (2); 2 Statutes 1183). "Trading for profit" means trading for the private gain of the statutory undertakers themselves or for distributing profit as dividend. A local authority, or other undertakers carrying on a remunerative public utility service not for private gain are not trading for profit. *Metropolitan Water Board v. Berton*, [1921] 1 Ch. 299; *sub nom. Metropolitan Water Board v. Dulwich College*, 36 T. L. R. 834; 11 Digest 298, 2298.

(f) *Penny v. Penny* (1868), L. R. 5 Eq. 227; 11 Digest 129, 185.

(g) *Re South Eastern Rail. Co. and L.C.C.'s Contract*, *South Eastern Rail. Co. v. L.C.C.*, [1915] 2 Ch. 252; 11 Digest 124, 156; *Fraser v. Fraserville City*, [1917] A. C. 187; 11 Digest 124, e.

(h) S. 2 (2), (6); 2 Statutes 1178. Disturbance means not merely business disturbance, but e.g. disturbance of sporting rights, *Venables v. Dept. of Agriculture for Scotland*, 1932 S. C. 573; Digest (Supp.).

(i) *Re South Eastern Rail. Co. and L.C.C.'s Contract*, *supra*. For powers to discharge or modify restrictions as to user of land, see Law of Property Act, 1925, s. 84; 15 Statutes 260; as amended by the Administration of Justice Act, 1932, s. 6; 25 Statutes 542; Law of Property Restrictive Covenants (Discharge and Modification) Rules, 1925, and Fees Rules, 1925; S.R. & O. 1925, Nos. 1182, 1272.

(k) *Corrie v. MacDermott*, [1914] A. C. 1056; 11 Digest 124, 157.

(l) *Bourne v. Liverpool Corp.* (1863), 33 L. J. (Q. B.) 15; 11 Digest 129, 180; *Re Chandler's Wiltshire Brewery Co. and L.C.C.*, [1903] 1 K. B. 569; 11 Digest 129, 181; *Re L.C.C. and City of London Brewery Co.*, [1898] 1 Q. B. 387; 38 Digest 566, 1049.

their value, and the probability of the licence continuing to be renewed must be taken into account in assessing compensation, even to a reversioner (*m*). [816]

A covenant in a lease giving to the lessee a right of renewal entitles him to compensation in respect of the period contemplated by the covenant (*n*), but the mere probability, however strong, of the renewal of a lease does not form any ground for compensation even if the lessee has laid out money in expectation of such renewal (*o*). [817]

In addition to the actual value to the owner of the property taken, he is entitled to such compensation as will indemnify him against all loss arising from the compulsory expropriation, and compensation is payable to occupiers in respect of fixtures, even if they be trade fixtures which might be removed, and if they are, in fact, removed compensation is payable in respect of damage or diminution in value caused by such removal (*p*). [818]

Compensation must also be made for damage done to stock-in-trade by its removal or for loss attributable to the necessity for selling at a low price before removal (*q*). [819]

Again, so far as the goodwill of a business is local and not purely personal, *i.e.* so far as it consists of the chance that old customers will deal with the same tradesman so long as he occupies the same shop, such goodwill is a proper subject for compensation, since it increases the value of the premises to their owner (*r*). On the other hand, there are many businesses carried on entirely by correspondence, the goodwill of which is purely personal and independent of locality, and in respect of which no compensation can be claimed. [820]

The amount of injury done by eviction to the goodwill of a business will frequently depend upon whether other premises can be obtained in the near neighbourhood; if they can, there may be no loss of actual goodwill; yet "if the rent were greater, that ought to be compensated for; if the lease were shorter, that ought; and if other circumstances of loss or precariousness, they ought" (*s*). Still, even if adjacent premises are procured, it is a question for the assessing tribunal whether some loss of business may not probably result (*t*). Where a trader whose lease was about to expire had purchased an adjoining house for the purpose of carrying on his business there, it was held that promoters, who acquired that house before he moved into it, were rightly ordered to pay compensation in respect of profits which he was likely to make there, such profits being calculated with reference to those made in his then present house (*u*). [821]

Akin to the question of goodwill is that of loss of profits, which is

(*m*) *Belton v. L.C.C.* (1893), 62 L. J. (Q. B.) 222; 11 Digest 129, 184.

(*n*) *Bogg v. Midland Rail. Co.* (1867), L. R. 4 Eq. 310; 31 Digest 75, 2211.

(*o*) *Ex parte Nadin* (1848), 17 L. J. (Ch.) 421; 11 Digest 280, 2080; *R. v. Liverpool and Manchester Rail. Co.* (1836), 4 Ad. & El. 650; 11 Digest 277, 2041.

(*p*) *Gibson v. Hammersmith Rail. Co.* (1863), 32 L. J. (Ch.) 337; 31 Digest 194, 3300; *Cotter v. Metropolitan Rail. Co.* (1864), 10 L. T. 777; 11 Digest 221, 1050.

(*q*) *R. v. Burrow* (1884), *The Times*, January 24, affirmed *sub nom. Metropolitan and Metropolitan District Rail. Cos. v. Burrow*, *The Times*, November 22; 11 Digest 129, 178; and *Hudson's Compensation*, Vol. 2, p. 1521, H. L.

(*r*) *Cooper v. Metropolitan Board of Works* (1888), 25 Ch. D. 472; 11 Digest 128, 177; *R. v. Scard* (1894), 10 T. L. R. 545; 11 Digest 209, 913.

(*s*) *Re Bidder and North Staffordshire Rail. Co.* (1878), 4 Q. B. D. 412, C. A., per BRAMWELL, L.J., at p. 432; 11 Digest 193, 728.

(*t*) *R. v. Scard* (1894), 10 T. L. R. 545; 11 Digest 209, 913.

(*u*) *White v. Works and Public Buildings Commissioners* (1870), 22 L. T. 591; 11 Digest 128, 176.

also a factor which may be taken into consideration. Such a loss may be temporary, *i.e.* it may arise from inability to carry on business profitably during the removal, or from the necessity of discontinuing business altogether for a period until new premises can be obtained (*a*).

[822]

Damage to trade by the pulling down of adjacent premises for the execution of the works, before the owner's property is taken, is not a subject of compensation (*b*), nor is the loss of arrears of rent which are rendered incapable of recovery by reason of the taking of land (*c*).

[823]

Potential Value.—The value is to be ascertained on a consideration of all the potentialities of the land, and all the use made of it by the vendor (*d*). Even if there be no immediate intention of using the land for a particular purpose, its potential value for that purpose may be considered, as for example, if land used only for agricultural purposes is by reason of its situation likely to be required for building sites (*e*). The purpose for which land has been acquired by the owner may also be taken into account, as for instance, if he has bought it for the purpose of erecting a school, and no other suitable site is available in the neighbourhood (*f*). In such a case the price originally paid for the land or spent in developing it is evidence to be weighed in arriving at its value to the owner, but is not conclusive evidence on the point (*g*). [824]

Speaking generally, and subject to the special provisions mentioned later regarding undertakers not trading for profit, the suitability of land for any particular purpose may be taken into account whether that purpose is or is not the purpose for which the purchasers are acquiring it, subject only to its suitability being such as to render it valuable to persons other than the undertakers. Land situated near water, for example, may be specially suited for the erection of mills (*h*). [825]

The value of minerals less the estimated cost of working the same (*i*) is to be taken into consideration where the undertakers either desire or are bound to take them and to make immediate compensation therefor; thus, although at the time of service of the notice to treat it may not be practicable to work a seam of coal profitably, the possibility of doing so in the future is not to be disregarded (*k*), and a probable

(a) *Jubb v. Hull Dock Co.* (1846), 9 Q. B. 443; 11 Digest 128, 174.

(b) *R. v. Vaughan* (1868), L. R. 4 Q. B. 190; 11 Digest 145, 288.

(c) *Re Kitworth Rifle Range*, [1899] 2 I. R. 305.

(d) *Re South Eastern Rail. Co. and L.C.C.'s Contract, South Eastern Rail. Co. v. L.C.C.*, [1915] 2 Ch. 252; 11 Digest 124, 156; *Hilcoat v. Canterbury and York (Archbishops)* (1850), 10 C. B. 327; 11 Digest 125, 158; *Re Morgan and London and North Western Rail. Co.*, [1896] 2 Q. B. 469; 11 Digest 278, 2059; *City and South London Rail. Co. v. St. Mary Woolnoth and St. Mary Woolchurch Haw, United Parishes*, [1905] A. C. 1; 11 Digest 125, 159, where it was held that the arbitrator was entitled to award compensation on the basis that the site of a church might in the future become available for building. In the case of *Stebbing v. Metropolitan Board of Works* (1870), L. R. 6 Q. B. 37; 7 Digest 550, 284, land forming parts of burial grounds was held to be valueless.

(e) *R. v. Brown* (1867), L. R. 2 Q. B. 630, per Lord Cockburn, at p. 631; 11 Digest 125, 160. In such a case the value is to be calculated at such price above the bare agricultural value as a possible purchaser would be likely to give; *Cedar Rapids Manufacturing and Power Co. v. Lacoste*, [1914] A. C. 569; 11 Digest 130, 187.

(f) *Bailey v. Isle of Thanet Light Railways Co.*, [1900] 1 Q. B. 722; 11 Digest 126, 162.

(g) *Ex parte Streatham and General Estates Co., Ltd.* (1888), 4 T. L. R. 766; 11 Digest 130, 188.

(h) *Ripley v. Great Northern Rail. Co.* (1875), 10 Ch. App. 435; 11 Digest 126, 161.

(i) *Eden v. North Eastern Rail. Co.*, [1907] A. C. 400, H. L.; 11 Digest 157, 374.

(k) *Brown v. Railways Comr.* (1890), 15 App. Cas. 240; 11 Digest 126, 163.

rise in the price of coal during the period likely to be required to complete the working may be taken into account (l). [826]

In claims based upon potential value or special adaptability of land, it is for the tribunal to form their own opinion as to the distance of the time when the land might be in demand for the particular purpose, and to assess its present value accordingly (m). So far as the land is increased or diminished in value by works which will be constructed by the undertakers, such increase or decrease in value must be disregarded (n). [827]

When land is acquired by a Government department or statutory undertakers not trading for profit, the Act of 1919 prevents the special suitability or adaptability of the land for any purpose (o) from being taken into account, if that purpose is one to which the land could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department or any local or public authority (p). [828]

This provision is intended to relieve public bodies not trading for profit from the necessity of paying compensation for "special adaptability" where land is peculiarly suitable or adaptable for the purpose of the undertaking, such as a reservoir, or docks, or a sewage farm (q). The rule also modifies the principle that the value of land for the purpose of compensation may be increased by the fact that a particular purchaser has paid or is prepared to pay a higher price than the market value because the land is peculiarly suitable for the special purpose for which he requires it (r). [829]

In cases in which the doctrine of special adaptability is not excluded, an owner of land may claim that his land is specially suitable or adaptable for some particular purposes, including the purpose for which it is being acquired by the undertakers, and if that prospective purpose enhances its value the arbitrator or jury may take this fact into consideration. This principle was first definitely recognised by the courts in the case of *Re Riddell and Newcastle and Gateshead Water Co.* (s),

(l) *Bwllfa and Merthyr Dare Steam Collieries* (1891), *Ltd. v. Pontypridd Waterworks Co.*, [1903] A. C. 426; 11 Digest 129, 186. Further, as to compensation for mines and minerals, see *post*.

(m) *City and South London Rail. Co. v. St. Mary Woolnoth and St. Mary Woolchurch Haw, United Parishes*, [1905] A. C. 1; 11 Digest 125, 159.

(n) *Fraser v. Fraserville City*, [1917] A. C. 187; 11 Digest 124, c.

(o) Not only the purpose for which the land is taken by the purchasers.

(p) S. 2 (3); 2 Statutes 1178.

(q) In view of the fact that a man may use his land for any purpose not forbidden by law, it may be doubted whether the Legislature has given full effect to its apparent intention, in providing that special adaptability for any purpose may not be taken into account if that purpose is one to which the land could be applied *only in pursuance of statutory powers*.

(r) See *Inland Revenue Commissioners v. Clay, Inland Revenue Commissioners v. Buchanan*, [1914] 3 K. B. 466; 39 Digest 226, 63, a decision as to gross value for the purposes of s. 21 of the Finance (1909-10) Act, 1910; 16 Statutes 748; where it was held that when a house, the value of which for residential purposes was not more than £750, was purchased by the trustees of an adjoining nurses' home for £1,000, because it was specially suitable for extension of the home, it was proper to take into consideration the necessities of an adjoining owner in arriving at the value. If there should be more than one person, not being a statutory body, willing to give a special price for the premises, it would apparently be incumbent on the arbitrator to take that fact into consideration in fixing the compensation to be paid by an undertaker not trading for profit.

(s) *Times* newspaper, January 14, 1879; 90 L. T. 44, n., C. A.; 11 Digest 126, 165. The principle was more fully laid down in *Re Ossatinsky (Countess)* and

where it was held that "it would have been a mistake to omit to consider any additional value which might attach to the land in consequence of its being a suitable site for a reservoir." [830]

It is not permissible to take into consideration the increased value of the land which is conferred by the special Act authorising the purchase (*t*). The natural adaptability of the land for the purpose for which it is taken is a proper matter for consideration as an element of value, but if it can be shown that there is no reasonable possibility of a market for the land for that purpose apart from the particular scheme under which it is taken, that element of value must be excluded (*u*). To include it in such circumstances would be to consider the value to the purchaser, which is wrong.

The tribunal assessing the compensation is not, however, precluded from considering special adaptability for the reason that other possible competitors could not use the land for the projected purpose without first obtaining statutory powers (*a*), or that the land could not be used for the contemplated undertaking without the use of other land belonging to different owners (*b*). [831]

Land used Illegally, etc.—Where the Act of 1919 applies and the value of the land acquired by a Government department or statutory undertakers not trading for profit is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase is not to be taken into account (*c*). [832]

Reinstatement.—If land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may be assessed on the basis of the reasonable cost of equivalent reinstatement in some other place (*d*).

This principle is applicable to such buildings as churches, church halls, schools and other properties of an exceptional character, and to business premises where special conditions or licences are requisite for the work carried on therein (*e*). If the circumstances are such that reinstatement must be in a particular neighbourhood, the necessity for the acquisition of land at a price beyond the ordinary market price of land in the area may be taken into consideration, if this is the only

Manchester Corpn. (1883), *Browne and Allan's Law of Compensation*, 2nd ed., 659; 11 Digest 126, 166.

(*t*) *Re Ossalinsky (Countess) and Manchester Corpn.*, *supra*; *Fraser v. Fraserville City*, [1917] A. C. 187; 11 Digest 124, *e*.

(*u*) *Re Gough and Aspatria, Silloth and District Joint Water Board*, [1904] 1 K. B. 417; 11 Digest 127, 168. The value attributable to special adaptability is the contingent value arising from the possibility of the land coming into the market when required for the purpose for which it is specially adapted, not the value of the possibility realised by reason of the fact that a statutory power to purchase for that purpose has been obtained. *Re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16; 11 Digest 127, 169.

(*a*) *Re Lucas and Chesterfield Gas and Water Board*, *supra*.

(*b*) *Re Tynemouth Corpn. and Northumberland (Duke)* (1903), 89 L. T. 557; 11 Digest 127, 167.

(*c*) *Acquisition of Land (Assessment of Compensation) Act*, 1919, s. 2 (4); 2 Statutes 1178.

(*d*) *Ibid.*, s. 2 (5).

(*e*) *London School Board v. South Eastern Railway Co.* (1887), 3 T. L. R. 710, C. A.; 11 Digest 129, 179; *Metropolitan and Metropolitan District Rail. Cos. v. Burrow*, *supra*, in note (*q*) to p. 370, *ante*.

way of placing the owner in as favourable a position as he was before; but the price must be reasonable (*f*). In arbitrations under the Acquisition of Land (Assessment of Compensation) Act, 1919 (*g*), the official arbitrator, if he adopts this method of assessing compensation, must be satisfied that reinstatement in some other place is *bona fide* intended (*h*). [833]

Returns of Capital Value, etc.—An arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919, is entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant (*i*). The arbitrator is entitled to be furnished with such returns and assessments as he may require (*k*), and the acquiring authority and the claimant must furnish to the arbitrator, on his request, any such returns or assessments if it is in their or his power to do so (*l*).

The arbitrator must also take into consideration a *bona fide* offer to purchase made before the passing of the Act of 1919, if it is brought to his notice (*m*). [834]

Allowance for Compulsory Purchase.—In arbitrations under the Act of 1919, no allowance is to be made on account of the acquisition being compulsory (*n*). In assessing the amount of compensation in other cases it is usual to allow to an owner an added percentage, generally 10 per cent., above the value of the land, on account of compulsory purchase, but this allowance had no express statutory authority. [835]

COMPENSATION FOR INJURIOUS AFFECTION

In General.—Where compensation is claimed in respect of injurious affection of land, the first point to be considered is whether the statutory undertakers are acquiring from the claimant any land which was held by him together with the land affected, at the time of the notice to treat (*o*). The answer to this question determines the principles on which compensation for injurious affection must be assessed. If no land is taken from the claimant he is only entitled to compensation for injurious affection due to the construction of works; but where part only of his land is taken, compensation may be claimed not only in respect of the construction of the works, but in respect of injury or anticipated injury arising from their use after the completion of the works.

Where lands are taken by undertakers under the powers of the Lands Clauses Acts, the question whether other lands are "held therewith" is one of fact to be decided according to the circumstances of each case.

(*f*) *Edinburgh Corp'n. v. North British Rail. Co.* (1892), Browne and Allan, Law of Compensation, 2nd ed., 656.

(*g*) 2 Statutes 1176.

(*h*) S. 2 (5); *ibid.*, 1178.

(*i*) S. 2 (2); *ibid.* Returns and assessments of rateable value are not included in this provision.

(*k*) S. 2, at end of section.

(*l*) Acquisition of Land (Assessment of Compensation) Rules, 1919; S.R. & O., 1919, No. 1836.

(*m*) S. 2 (3); 2 Statutes 1178. This provision, though it occurs in a sub-section dealing with special adaptability, is of general application, see *Percival v. Peterborough Corp'n.*, [1921] 1 K. B. 414; 11 Digest 128, 173.

(*n*) S. 2 (1); 2 Statutes 1178.

(*o*) Lands Clauses Consolidation Act, 1845, ss. 49, 63; 2 Statutes 1128, 1133.

As a general proposition it may be laid down that different pieces of land in the same ownership must be deemed to be held together if, by reason of their situation, possession of, or control over, one piece increases the value of all the others. It is not sufficient that the lands are held under the same title; on the other hand it is not necessary that they should be so held, nor that they should be contiguous or held for the same purpose (p).

The right to compensation in respect of lands not taken depends on cause and effect, and not on distance or proximity of the land affected (q). Thus, where an owner had laid out a building estate, part of which was already let on building leases and part was let to brick-makers, it was held that the whole was held together, although it was intersected by a railway and partly by other property of the same owner (r). Again, where land was taken on lease for a rifle range together with some marsh land behind the butts, which was necessary as a "safety belt," but was separated from the range by other land in which the owners of the range had only a precarious interest, it was held that the taking of the marsh land amounted to a severance and compensation was payable (s). A mortgagee in possession with power of sale is entitled to claim compensation for injurious affection (t). [836]

Where no Lands taken.—Where an owner claims compensation for injurious affection but his land has not been held with other land acquired by the undertakers, his claim will be under sect. 22 of the Lands Clauses Consolidation Act, 1845, if it is a claim for less than £50; if the claim exceeds that sum it will be under sect. 68 of the same Act (u). The four following rules will in either case apply: [837]

(i.) *The injury must result from an act authorised by the undertaker's statutory powers.* Compensation is only given for acts authorised by statutory powers, and such powers must be exercised reasonably; if anything is done in excess of or contrary to the powers given by the Legislature, or if those powers are exercised unreasonably or negligently, or without observing the statutory preliminaries, the undertakers are not protected from liability to action.

In such cases, therefore, the remedy for an aggrieved owner is an action *ex delicto* at common law, and the powers of the statutory tribunal for the assessment of compensation are not available (a). A mere

(p) *Cowper Essex v. Acton Local Board* (1889), 14 App. Cas. 153; 11 Digest 135, 216. "I am prepared to hold that where several pieces of land owned by the same person are so near to each other and so situated that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Act, so that if one piece is compulsorily taken and converted to uses which depreciate the value of the rest, the owner has a right to compensation," *per* Lord Watson, at p. 167.

(q) *Caledonian Rail. Co. v. Lockhart* (1860), 3 L. T. 65; 11 Digest 149, 321.

(r) *Cowper Essex v. Acton Local Board*, *supra*.

(s) *Holt v. Gas Light and Coke Co.* (1872), L. R. 7 Q. B. 728; 11 Digest 131, 191.

(t) *R. v. Middlesex Clerk of the Peace*, [1914] 3 K. B. 259; 11 Digest 275, 2026.

(u) 2 Statutes 1121, 1134. These provisions apply whether the land taken for the works is acquired compulsorily or by agreement (*Kirby v. Harrogate School Board*, [1896] 1 Ch. 437; 11 Digest 145, 297), although they occur among the clauses relating to the purchase and taking of lands otherwise than by agreement.

(a) *Caledonian Rail. Co. v. Colt* (1860), 3 L. T. 252, H. L.; 11 Digest 136, 225; *Brine v. Great Western Rail. Co.* (1862), 31 L. J. (Q. B.) 101; 38 Digest 38, 227 (overflows of water); *Biscoe v. Great Eastern Rail. Co.* (1873), L. R. 16 Eq. 636; 11 Digest 138, 250 (structural damage caused by negligence); *Saunby v. London (Ont.) Water Commissioners*, [1906] A. C. 110, P. C.; 11 Digest 172, 494 (failure to give statutory notice); *Lewis and Solome v. Charing Cross, etc. Rail. Co.*, [1906] 1 Ch. 508; 7 Digest 308, 300 (failure to comply with building regulations).

defect in the execution of the works does not, however, necessarily give a right of action (b).

Conversely, if the injury is caused by a proper exercise of statutory powers, the jurisdiction of the courts is ousted, and compensation to the owner must be assessed by the appropriate statutory tribunal (c), but if more than one method of exercising a power is available, and the undertakers choose a method which is hurtful to third parties instead of an alternative which would be innocuous or less hurtful, this may constitute a negligent exercise of the power (d), though if the alternative method could only be adopted at a cost unreasonably high, there is no negligence (e).

Where a claim is made for compensation, it lies upon the undertakers to allege negligence, if they desire to rely upon negligence as an answer to the claim (f).

(ii.) *The injury in respect of which compensation is claimed must be such as would have given the claimant a cause of action if it had not been caused by the exercise of statutory powers.* So long as promoters upon land purchased by them merely do such acts as any landowner might lawfully do, adjoining owners have no claim to compensation (g), and damage which would be too remote to support an action in tort is too remote to support a claim for compensation (h).

A right to compensation is therefore excluded where promoters pull down houses and thereby cause injury to the business of a neighbouring trader (i); or where they cause a similar injury by rebuilding operations (k), or raise buildings or works which interfere with an owner's privacy or view without interfering with any legal right to, or easement of, light (l), or where by excavations they cause a subsidence in buildings in respect of which no legal right of support has been acquired (m).

Interference with public rights is not a matter in respect of which an individual can sue in his own right (n), and no compensation is payable in respect of an injury suffered in common with the public at large unless the claimant can show that his property has in some way been specially injured by such interference (o). [838]

(b) *Uttley v. Todmorden L. B. of Health* (1874), 44 L. J. (C. P.) 19; 11 Digest 292, 2199.

(c) *Thicknesse v. Lancaster Canal Co.* (1838), 4 M. & W. 472; 11 Digest 136, 230.

(d) *Lagan Navigation Co. v. Lambeg Bleaching, Dyeing and Finishing Co., Ltd.*, [1927] A. C. 226, *per ATKINSON, L.*, at p. 243; 38 Digest 28, 149; and see *Freehold General Land Investment Co. v. Metropolitan District Rail. Co.* (1865), 14 L. T. 96; 38 Digest 262, 64.

(e) *Harrison v. Southwark and Vauxhall Water Co.*, [1891] 2 Ch. 409; 38 Digest 49, 284.

(f) *St. James and Pall Mall Electric Light Co., Ltd. v. R.* (1904), 73 L. J. (K. B.) 518; 38 Digest 51, 294.

(g) *Wilson v. Waddell* (1876), 2 App. Cas. 95; 34 Digest 725, 1071.

(h) *R. v. Poulter* (1887), 20 Q. B. D. 132; 11 Digest 149, 323.

(i) *R. v. Vaughan* (1868), L. R. 4 Q. B. 190; 11 Digest 145, 288.

(k) *R. v. Hungerford Market Co., Ex parte Eyre* (1834), 1 Ad. & El. 676; 11 Digest 139, 255.

(l) *Re Penny* (1857), 7 E. & B. 660; *sub nom. R. v. South Eastern Rail. Co.*, 29 L. T. (o. s.) 124; 11 Digest 145, 289; *Butt v. Imperial Gas Co.* (1866), 2 Ch. App. 158; 19 Digest 181, 1314.

(m) *Metropolitan Board of Works v. Metropolitan Rail. Co.* (1869), L. R. 4 C. P. 192; 41 Digest 36, 263. A number of other cases dealing with this subject are cited in 6 Halsbury (Hailsham ed.), title "Compulsory Purchase of Land and Compensation," p. 55.

(n) *Liverpool Corp. v. Chorley Waterworks Co.* (1852), 2 De G. M. & G. 852; 38 Digest 19, 101; *Ware v. Regent's Canal Co.* (1858), 28 L. J. (Ch.) 153; 11 Digest 110, 62.

(o) *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 11 Digest 142, 272.

(iii.) *The injury must be one which amounts to an interference with an owner's interest in, or with rights connected with, his ownership of land.* Where by the construction of authorised works there is a physical interference with a right, whether public or private, which an owner of land or buildings is entitled by law to make use of in connection therewith, and which gives it a marketable value apart from any particular use to which the owner may put it, if the property, by reason of the execution of the works, is diminished in value, there arises a claim for compensation; but where the right is one possessed in common with the public, there must be something peculiar to the right in its connection with the property, to distinguish it from that which is enjoyed by the rest of the world (*p*). Compensation is therefore payable if the execution of the authorised works causes interference with legal rights of light (*q*) or rights of support (*r*) or rights of way (*s*) or of water (*t*), or if there is an infringement of restrictive covenants of which the owner has the benefit (*u*).

The interference must, however, be of such a nature as to cause direct injury by actual damage to the land or the structures thereon or by otherwise depreciating its value. It is not sufficient if the interference amounts only to personal inconvenience (*a*) or injury to business (*b*). Damage occasioned to goods upon premises injuriously affected may also be a ground for compensation (*c*).

The depreciation of the value must also be a depreciation apart from any special use to which the property may be put by the owner, but in ascertaining the amount of compensation to be paid, the value of the property as a marketable entity to be employed for any purpose

(*p*) *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243, affirming *McCarthy v. Metropolitan Board of Works* (1872), L. R. 8 C. P. 191, Ex. Ch.; 11 Digest 142, 272; *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; 11 Digest 140, 259.

(*q*) *Eagle v. Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638; 11 Digest 144, 286; *Clark v. London School Board* (1874), 9 Ch. App. 120; 11 Digest 137, 233; *Bedford (Duke) v. Dawson* (1875), L. R. 20 Eq. 353; 11 Digest 137, 231; *Courage & Co. v. South Eastern Rail. Co.* (1902), 19 T. L. R. 61; 11 Digest 137, 233. Where railway works obstructed ancient lights and modern windows it was held that compensation was payable for the obstruction of the old and the new lights, under the proviso to s. 16 of the Railways Clauses Consolidation Act, 1845; 14 Statutes 39. *Re London, Tilbury and Southend Rail. Co. and Gower's Walk Schools Trustees* (1889), 24 Q. B. D. 326; 11 Digest 144, 287.

(*r*) *Metropolitan Board of Works v. Metropolitan Rail. Co.* (1869), L. R. 4 C. P. 192; 41 Digest 36, 263.

(*s*) *Furness Rail. Co. v. Cumberland Co-operative Building Society* (1884), 52 L. T. 144, H. L.; 11 Digest 139, 258; *Ford v. Metropolitan and Metropolitan District Rail. Cos.* (1886), 17 Q. B. D. 12; 11 Digest 143, 276; *London School Board v. Smith*, [1895] W. N. 37; 11 Digest 137, 239.

(*t*) *Ferrand v. Bradford Corp.* (1856), 27 L. T. (o. s.) 11; 11 Digest 218, 1030; *Bush v. Trowbridge Waterworks Co.* (1875), 10 Ch. App. 459; 43 Digest 1073, 109.

(*u*) *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437; 11 Digest 145, 297; *Long Eaton Recreation Grounds Co. v. Midland Rail. Co.*, [1902] 2 K. B. 574; 11 Digest 146, 298; *Manchester, Sheffield and Lincolnshire Rail. Co. v. Anderson*, [1898] 2 Ch. 394, C. A.; 11 Digest 146, 299 (a temporary inconvenience which does not interfere with the estate or title or possession is not a breach of a covenant for quiet enjoyment for which compensation is payable).

(*a*) *Caledonian Rail. Co. v. Ogilvy* (1855), 25 L. T. (o. s.) 106; 11 Digest 140, 261.

(*b*) *R. v. London Dock Co.* (1836), 5 Ad. & El. 163; 11 Digest 140, 260; *Rickett v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 11 Digest 140, 265.

(*c*) *Knock v. Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 131; 11 Digest 147, 313. Damage to goods not upon the premises would appear to be too remote, see *Re Clarke and Wandswoorth District Board of Works* (1868), 17 L. T. 549; 11 Digest 145, 290.

must be taken into consideration, not excluding any legitimate and reasonable purpose for which it is at the time being used (*d*).

The application of the principle that where the right is one possessed in common with the public, there must be some special circumstances peculiar to the right in its connection with the property in order to support a claim for compensation, has been the subject of numerous decisions, some of them of a conflicting nature, though in some cases the apparent discrepancy may be explained by the variation in the way in which the claims for compensation were framed.

Where a railway crossing over a highway obstructed the sole means of access to the claimant's property and the jury found that there was consequential depreciation in value, their verdict was sustained (*e*), though in other cases obstruction of a highway has been held to be a disturbance affecting the public generally and not a subject for compensation (*f*).

Obstruction of the access to a public house during the construction of authorised works, causing loss of trade, has been held to give no title to a claim for compensation, because the loss was caused by the performance of lawful and necessary work which would not have been the subject of an action at law before the passing of the statute authorising the work (*g*); though a diversion of a road where the assessing tribunal found as a fact that the value of the premises was thereby diminished, may form a subject of compensation (*h*), as would also the erection of an embankment which lessened the width of a highway opposite a house, the jury having found that the house was permanently injured thereby (*i*). Where the construction of a bridge over a tidal navigable river interfered with the access to a wharf, compensation for depreciation in the value of the wharf by reason of the execution of the works was allowed, but claims under several heads relating to extra expense necessarily incurred in the carrying on of the business, were disallowed (*k*). [889]

(iv.) *The injury must arise from the execution of the works and not from their subsequent user.* The words "injuriously affected by the execution of the undertaking" and "injuriously affected by the execution of the works" which are used in sects. 22 and 68, respectively, of the Lands Clauses Consolidation Act, 1845 (*l*), refer to injury which is caused by the actual construction or execution of the works, and not to injury caused by subsequent user (*m*). No claim can be sustained, for example, for deterioration in the value of property after the construction of a railway, caused by the vibration set up by passing trains or by

(*d*) *Re Wadham and North Eastern Rail. Co.* (1884), 14 Q. B. D. 747; on appeal 1885, 16 Q. B. D. 227; 11 Digest 141, 266; *Metropolitan Board of Works v. Howard* (1889), 5 T. L. R. 732; 11 Digest 143, 279.

(*e*) *Glover v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 912; 11 Digest 144, 282.

(*f*) *Caledonian Rail. Co. v. Ogilvy* (1855), 25 L. T. (o. s.) 106; *Wood v. Stourbridge Rail. Co.* (1864), 16 C. B. (N. S.) 222; 38 Digest 308, 323.

(*g*) *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 11 Digest 140, 265.

(*h*) *Chamberlain v. West End of London and Crystal Palace Rail. Co.* (1863), 2 B. & S. 617; 11 Digest 140, 263.

(*i*) *Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82; 11 Digest 141, 270.

(*k*) *Hewett v. Essex County Council* (1928), 138 L. T. 742; Digest (Supp.).

(*l*) 2 Statutes 1121, 1134. Cf. also s. 21.

(*m*) *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; 11 Digest 140, 259.

smoke from locomotives, or by noise (*n*), or by diversion of traffic from a ferry (*o*), though compensation is payable if the value of property is deteriorated during the execution of the works (*p*).

Where a railway company in exercise of their powers enlarged a ventilating tunnel, the smoke from which caused deterioration to adjoining houses, it was held that no compensation was payable as there would have been no damage if the railway underground had not been used, and the injury, therefore, resulted from the use and not from the construction of the ventilator (*q*).

Not only is compensation debarred for injury caused by the user of works authorised by statute, but no right of action accrues against statutory undertakers so long as their undertaking is carried on in accordance with the powers conferred upon them by their special Act (*r*), and this is so even though their actions might, apart from the statute, constitute a nuisance, for the exercise of powers conferred by Parliament cannot be treated as amounting to a nuisance at common law (*s*).
[840]

Where other Lands taken.—Where part only of “lands held together” by the same owner is taken, the compensation payable in addition to the purchase money and compensation for the land actually taken is not merely “in respect of any lands or of any interest therein which shall have been taken for or injuriously affected by the execution of the works” (*t*), but the owner is entitled to compensation for the damage, if any, to be sustained by him by reason of the severing of the land taken from his other land or other injurious affection of such other land by the exercise of the statutory powers (*u*).

Such an owner, therefore, is entitled to compensation not only for the land taken, but for all consequential damage actually suffered or which may reasonably be foreseen, provided it is not too remote, whether occasioned by severance or by other injurious affection, and whether such damage would apart from the statutory powers be actionable or not; and whether caused by the execution of authorised works on the land taken from him or by the subsequent legal user of such works.
[841]

The distinction which exists between the cases of those owners who have had, and those who have not had, land taken has often been affirmed (*a*). It is to be explained and justified on the ground that

(*n*) *Hammersmith and City Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; 11 Digest 106, 28; *City of Glasgow Union Rail. Co. v. Hunter* (1870), L. R. 2 Sc. & Div. 78, H. L.; 11 Digest 149, 324.

(*o*) *Hopkins v. Great Northern Rail. Co.* (1877), 2 Q. B. D. 224; 11 Digest 144, 281.

(*p*) *Re Penny* (1857), 26 L. J. (Q. B.) 225; 11 Digest 145, 289.

(*q*) *A.-G. and Hare v. Metropolitan Rail. Co.*, [1894] 1 Q. B. 385; 11 Digest 147, 309.

(*r*) *Vaughan v. Taff Vale Rail. Co.* (1860), 5 H. & N. 679; 38 Digest 349, 558. If, however, in the carrying on of their undertaking the undertakers exceed their express statutory powers and in so doing cause injury, they are liable at common law, even though they may not have been guilty of negligence. *Jones v. Festiniog Rail. Co.* (1868), L. R. 3 Q. B. 733; 38 Digest 350, 562.

(*s*) *R. v. Pease* (1832), 2 L. J. (M. C.) 26; 38 Digest 347, 545. Special Acts may, however, contain special provisions as to nuisance.

(*t*) Lands Clauses Consolidation Act, 1845, s. 68; 2 Statutes 1134.

(*u*) *Ibid.*, ss. 49, 68; 2 Statutes 1128, 1133.

(*a*) *Re Stockport, Timperley and Altrincham Rail. Co.* (1864), 33 L. J. (Q. B.) 251; 11 Digest 134, 213; *Buccleuch (Duke) v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418; 11 Digest 134, 215; *Cowper Essex v. Acton Local Board* (1889), 14 App. Cas. 153; 11 Digest 135, 216.

an owner from whom land has been taken could, in the absence of statutory powers, have prevented construction of the undertakers' works by refusing to sell, and that, as these works have only been constructed by infringing his rights and by taking his land compulsorily, he ought to be indemnified against all loss.

In the first place, compensation must be made for the damage, if any, to be sustained by the owner, lessee or tenant of the lands by reason of the severing of the lands taken from other lands of such owner, lessee or tenant which are held therewith (*b*), but compensation for severance is not payable unless the lands taken are so connected with or related to the lands retained that the owner or occupier is prejudiced in his ability to use or dispose of the latter (*c*). In assessing the compensation, consideration may properly be given to the potential value or prospective use of the severed lands as in the case of actual purchase (*d*), and the assessing tribunal is entitled to form its own judgment as to the time when any prospective increase in value is likely to accrue (*e*). [842]

Where access to severed land is interfered with, the assessing tribunal may take into account any means of access thereto which the undertakers are willing to give over the land which they acquire, the provision of such access not being inconsistent with the purposes for which the lands are taken (*f*). [843]

Apart from the right to compensation for severance, the principles to be applied in assessing compensation for injurious affection differ from those applicable in the case of an owner from whom no lands are taken in the following respects :

(i.) The rule that the injury must result from an act authorised by the undertakers' statutory powers applies, but that rule is extended so as to give a right of compensation not only for injury caused by the execution of authorised works, but also for injury resulting from the legal use of the works (*g*). [844]

(ii.) The injury in respect of which compensation is payable is not limited, as in cases where no other land is taken, to injury which would have given to the claimant a cause of action if it had not been caused by the exercise of statutory powers (*h*).

Compensation may be payable, for example, if it can be shown that dwelling-houses are reduced in value by reason of the noise and disturbance caused by children attending a school erected on land acquired from the owner of the houses (*i*), or by the noise of trams passing over

(*b*) Lands Clauses Consolidation Act, 1845, ss. 49, 63, 120, 121 ; 2 Statutes 1128, 1133, 1156.

(*c*) *Holditch v. Canadian Northern Ontario Rail. Co.*, [1916] 1 A. C. 536 ; 11 Digest 131, *z*.

(*d*) *R. v. Brown* (1867), L. R. 2 Q. B. 630 ; 11 Digest 125, 160 ; *Ripley v. Great Northern Rail. Co.* (1875), 10 Ch. App. 435 ; 11 Digest 126, 161 ; and see other cases cited, *ante*, under "Compensation in Respect of Acquisition of Land."

(*e*) *City and South London Rail. Co. v. St. Mary Woolmoth and St. Mary Woolchurch Haw, United Parishes*, [1905] A. C. 1 ; 11 Digest 125, 159.

(*f*) *Re Gonty and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439 ; 11 Digest 131, 197.

(*g*) See *post*, (iv.).

(*h*) *Re Stockport, Timperley and Altrincham Rail. Co.* (1864), 33 L. J. (Q. B.) 251 ; 11 Digest 184, 213 ; *Buccleuch (Duke) v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418 ; 11 Digest 184, 215 ; but see *contra*, *City of Glasgow Union Rail. Co. v. Hunter* (1870), L. R. 2 Sc. & Div. 78, H. L. ; 11 Digest 149, 324.

(*i*) *R. v. Pearce, Ex parte London School Board* (1898), 67 L. J. (Q. B.) 843 ; 11 Digest 185, 218.

land acquired from the owner for the widening of a street and for the laying of tramways (*k*). [845]

(iii.) It is not necessary, in order to establish a right to compensation, to show that the injury amounts to an interference with the owner's interest, or with rights connected with his ownership of the land. An owner is entitled to claim in respect of all consequential damage (*l*), but the damage must not be too remote (*m*). [846]

(iv.) Where part only of lands held together by the same owner is taken, compensation is payable not only for injurious affection of the land remaining in the hands of the owner by reason of the execution of the works, but also for injurious affection by reason of depreciation attributable to anticipated legal use of the works to be constructed on the land taken (*n*); but this right to compensation does not extend to damage caused by the use of works on land not taken from the same owner. Where, *e.g.* undertakers were empowered to widen and to lay trams in a street, the owner of land, of which a strip was taken for widening, was held not to be entitled to compensation for depreciation of the remainder of his property by the running of trams, the lines for which had been laid in the street, but not upon the land acquired from him (*o*). Similarly, where a local authority was empowered to construct sewers and sewage disposal works, an owner from whom a strip of land had been acquired for laying sewers was not entitled to compensation for damage by reason of the proximity of sewage works which had been constructed on land not acquired from him (*p*). [847]

Where part only of "lands held together" are taken by statutory undertakers, and authorised works, injuriously affecting the remaining lands of the owner, are constructed or to be constructed upon the lands so taken and upon other land acquired from other owners, the amount of compensation payable is not to be based upon the injury, or anticipated injury, caused by the whole of the works, but only upon the injury arising from the establishment and use of works constructed or to be constructed upon that part of the site which was acquired from the claimant. The difficult problem of applying this principle can only be settled by a consideration on the part of the assessing tribunal of all the circumstances of a particular case (*q*). [848]

COMPENSATION TO LESSEES AND TENANTS

If land acquired by statutory undertakers is subject to a lease or a tenancy agreement, compensation is payable to the lessee or tenant if possession is taken before the expiration of the term. If immediate

(*k*) *Tayleur v. Dolter Electric Traction, Ltd.* (1907), 51 Sol. Jo. 702; 11 Digest 135, 220.

(*l*) *Re Stockport, Timperley and Altrincham Rail. Co.* (1864), 33 L. J. (Q. B.) 251; 11 Digest 134, 213; *Brown v. Railways Commissioner* (1890), 15 App. Cas. 240; 11 Digest 126, 163.

(*m*) *Re Tynemouth Corpn. and Northumberland (Duke)* (1903), 89 L. T. 557; 11 Digest 127, 167.

(*n*) *Buckleuch (Duke) v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418; 11 Digest 134, 215. Anticipated failure of or defect in the works does not form the subject of compensation, for this would be to assume negligence on the part of the undertakers, see *Re Dudley Corpn.* (1881), 8 Q. B. D. 86; 11 Digest 158, 381.

(*o*) *R. v. Mountford, Ex parte London United Tramways (1901), Ltd.*, [1906] 2 K. B. 814; 11 Digest 135, 219, but *secus* where the lines are laid on the land taken; *Tayleur v. Dolter Electric Traction, Ltd.* (1907), 51 Sol. Jo. 702; 11 Digest 135, 220.

(*p*) *Horton v. Colewyn Bay and Colewyn U.D.C.*, [1908] 1 K. B. 327; 11 Digest 135, 223, a case under the P.H.A. 1875, s. 308; 13 Statutes 755.

(*q*) *Rockingham Sisters of Charity v. R.*, [1922] 2 A. C. 315; Digest (Supp.).

possession is required of a leasehold interest of which more than a year remains to run, the procedure is the same as in the case of acquisition of and entry on lands; if the interest of the tenant is not greater than that of a tenant for a year or from year to year, or if a lease has less than a year to run (*r*), the tenant or lessee may be required to give up possession (*s*).

The undertakers may refrain from taking possession until the lease or tenancy comes to an end, or they may serve notice to quit in accordance with the lease or agreement (*t*), or they may ask the owner to do so before the completion of the purchase (*u*) and avoid payment of compensation, although the tenant, without permission, remains in possession (*a*), but special powers of terminating a lease cannot be used for this purpose (*b*).

When compensation is payable in respect of a lease or a tenancy, it is assessed on the same principles as in the case of the acquisition of land, including compensation for severance (*c*), and where the interest of the tenant is no greater than as tenant for a year or from year to year, compensation is also payable for any just allowance which ought to be made to him by an incoming tenant (*d*). If notice to quit is given by undertakers and subsequently withdrawn, the tenant is entitled to compensation for the expense incurred (*e*).

Claims may conceivably be made by tenants for compensation in respect of goodwill under the Landlord and Tenant Act, 1927 (*f*), where a tenancy is determined on the taking or the appropriation of land for public purposes, or where a tenancy of land required for such purposes has expired by effluxion of time. No compensation is payable to the lessee or tenant if possession is taken on the expiration of a lease or agreement in writing, or if possession is resumed in exercise of a power, contained in a lease, to determine the same for the purposes of a Government department, a local or public authority or a statutory or public utility company (*g*), but this exemption from liability would not appear to extend to cases where a tenancy not in writing has been determined by notice to quit or by effluxion of time. In such a case, however, if the premises are to be demolished wholly or partially, or used for a different or more profitable purpose, the tribunal, in assessing the compensation, must have regard to the effect of such demolition or change of use on the value of the goodwill to the landlord (*h*). The amount of compensation (if any) payable, being based on the benefit

(*r*) *R. v. Great Northern Rail. Co.* (1876), 2 Q. B. D. 151; 11 Digest 280, 2073.

(*s*) Lands Clauses Consolidation Act, 1845, s. 121; 2 Statutes 1156. The undertakers may of course adopt the alternative of serving a notice to treat if they so desire.

(*t*) *Syers v. Metropolitan Board of Works* (1877), 36 L. T. 277; 11 Digest 173, 502.

(*u*) *Re Portsmouth Rail. Co., Ex parte Merrett* (1860), 2 L. T. 471; 11 Digest 280, 2082.

(*a*) *Ex parte Nadin* (1848), 17 L. J. (Ch.) 421; 11 Digest 280, 2080.

(*b*) *Solway Junction Rail. Co. v. Jackson* (1874), 1 R. (Ct. of Sess.) 831; 11 Digest 276, *l*. See, further, as to acquisition of interests of lessees and tenants, under title COMPULSORY PURCHASE OF LAND ("Leases and Tenancies").

(*c*) Lands Clauses Consolidation Act, 1845, ss. 120, 121; 2 Statutes 1156. See *ante*, "Compensation in respect of acquisition of land."

(*d*) *Ibid.*, s. 121.

(*e*) *R. v. Rochdale Improvement Act Commissioners* (1856), 2 Jur. (N. S.) 861; 11 Digest 280, 2085.

(*f*) 10 Statutes 375.

(*g*) *Ibid.*, s. 4. (1) (*g*).

(*h*) *Ibid.*, s. 4 (1) (*a*).

gained by the landlord, and not the loss suffered by the tenant (*i*), is therefore not likely in such a case to be large. [849]

CLAIMS AFTER ASSESSMENT OF COMPENSATION

It is the general rule, that claims made by an owner in respect of all matters for which he is entitled to claim compensation must be made at the same time (*k*) once and for all (*l*). Compensation cannot be claimed from time to time (*m*) unless the statutory power so provides (*n*).

But if land is acquired by a local authority for a specific purpose under any enactment or statutory order incorporating the Lands Clauses Acts, and the land is subsequently appropriated under sect. 163 of the L.G.A., 1933 (*o*), for some other purpose approved by the M. of H. for which the local authority are authorised to acquire land, any work executed on the land after the appropriation is to be deemed, for the purposes of sect. 68 of the Lands Clauses Consolidation Act, 1845 (*p*), to have been authorised by the enactment or statutory order under which the land was acquired.

This provision extends the operation of sect. 68 in cases where an owner of land was entitled to claim compensation thereunder in respect of the purpose for which the land was acquired, to the new purpose for which the land is appropriated. It might be possible, for example, that this new purpose involved a breach of a restrictive covenant to which the land was subject (see *ante*, p. 377), and that compensation should be paid by the local authority. [850]

A right to compensation for injurious affection by reason of the execution of the works on the appropriated land is therefore given to an owner of land, provided that (i.) the amount of the claim exceeds £50 (*q*); and (ii.) the enactment or statutory order under which the land was acquired incorporates sect. 68 of the Lands Clauses Consolidation Act, 1845 (*r*); or (iii.) such enactment contains a provision authorising the making of an order for compulsory purchase which may incorporate or apply sect. 68 (*s*). [851]

Apart from these exceptions, the question as to how far, if at all, claims can be sustained, either by way of compensation or action for

(*i*) *Hudd v. Matthews*, [1930] 2 K. B. 197; Digest (Supp.).

(*k*) *Mercer v. Liverpool, St. Helens and South Lancashire Rail. Co.*, [1904] A. C. 461; 11 Digest 276, 2038.

(*l*) *Craft v. London and North Western Rail. Co.* (1863), 32 L. J. (Q. B.) 118; 11 Digest 150, 327.

(*m*) *Stone v. Yeovil Corpn.* (1876), 2 C. P. D. 99; 43 Digest 1069, 77.

(*n*) See, e.g. Railways Clauses Consolidation Act, 1845, s. 81; 14 Statutes 63.

(*o*) 26 Statutes 396.

(*p*) 2 Statutes 1134.

(*q*) The provisions of s. 22 of the Lands Clauses Consolidation Act, 1845, 2 Statutes 1121, are not applied by s. 163 of the Act of 1933.

(*r*) 2 Statutes 1134. It has been doubted whether s. 68 of itself gives a right to compensation, or merely lays down the procedure to be followed in making a claim, the right to which arises *aliunde*, as e.g. from s. 23, or from provisions in the special Act, see *R. v. St. Luke's* (1871), L. R. 7 Q. B. 148, at p. 151; 11 Digest 138, 205; the doubt is probably unfounded, see *McCarthy v. Metropolitan Board of Works* (1872), L. R. 7 C. P. 508, *per WILLES, J.*, at p. 516, and *per KEATING, J.*, at p. 518.

(*s*) This would appear to follow from the *ratio decidendi* in *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437; 11 Digest 145, 297. It is apparently intended that these provisions should extend to cases where part only of an owner's land was taken, even though the local authority had not, by entry before assessment of compensation, brought into operation the provisions of s. 68 at the time of acquisition, *sed quere*.

damages, where injury is caused which could not have been foreseen at the time when the original claim for compensation was made, is still obscure and has not been definitely decided by the courts (t).
[852]

COMPENSATION FOR MINES AND MINERALS

Right of Support.—The consideration of compensation in respect of mines and minerals subjacent or adjacent to land purchased by statutory undertakers involves also a consideration of the question of the right to support which the purchasers are entitled to claim for their undertaking.

Apart from statute, an owner who sells land to a statutory undertaker, but reserves the minerals, has by the common law impliedly granted to the purchasers all support, both subjacent and adjacent required for the purposes of the undertaking, and he cannot work the minerals, either those beneath the land sold, or those beneath the adjoining land not sold, so as to interfere with those rights of support (u).

In addition, the purchaser is entitled to any right of support to which the vendor at the time of conveyance was entitled from any adjoining owner of land, or from the owner of subjacent mines or minerals if they are not in the same ownership with the land. Any such right, the existence of which depends on the vendor's title, is generally limited to a right of support of the land in its natural state, or may possibly extend to a right of support to the land in the state in which it exists at the date of the conveyance. The undertakers do not obtain through the vendor a right of support from lands or mines not owned by the vendor, for works established by them on the land if such works involve an increase in the amount of support requisite. Such a right may, however, be acquired as against an adjoining owner by prescription, if it is actually enjoyed without interruption for a period of twenty years after the works have been established, or as an interruption to be effective must be submitted to or acquiesced in for a period of one year after the receipt of notice, the right will in practice be effective, if it is actually enjoyed without interruption for more than nineteen years after the establishment of the works (a).

Where the appropriate provisions of the Lands Clauses Consolidation Act, 1845, apply, undertakers can purchase by agreement either the whole land including the minerals, or they may purchase the surface only, the vendor reserving the subjacent mines, or they may purchase a particular stratum of land, the vendor reserving the surface and all other strata (b), but they cannot compulsorily acquire the surface only or any particular stratum of land, and if the promoters desire to purchase land, the owner can compel them to purchase the minerals

(t) See, however, *Lawrence v. Great Northern Rail. Co.* (1851), 16 Q. B. 643; 38 Digest 345, 540; *Lancashire and Yorkshire Rail. Co. v. Evans* (1851), 15 Beav. 322; 11 Digest 105, 21; *Re Ware and Regent's Canal Co.* (1854), 9 Exch. 395; 11 Digest 186, 667; *A.-G. and Hare v. Metropolitan Rail. Co.*, [1894] 1 Q. B. 384; 38 Digest 49, 285.

(u) *Caledonian Rail. Co. v. Sprot* (1856), 27 L. T. (o. s.) 264; 11 Digest 161, 403; *Elliot v. North Eastern Rail. Co.* (1863), 10 H. L. Cas. 333; 11 Digest 159, 389; *London and North Western Rail. Co. v. Evans*, [1893] 1 Ch. 16; 11 Digest 158, 383.

(a) Prescription Act, 1832, ss. 2, 4; 5 Statutes 824, 827.

(b) Lands Clauses Consolidation Act, 1845, s. 6; 2 Statutes 1115.

thereunder, and to pay for them at once; moreover, as in working minerals in his adjoining land the owner is bound to leave such support as may be required for the land on which the undertaking is constructed, the undertakers must also pay compensation to the owner in respect of minerals left unworked for the purpose of giving such support (c). [853]

The Mining Codes.—Both the common law and the Lands Clauses Acts are, however, modified in relation to the respective rights of statutory undertakers and owners of land taken compulsorily where the special Act incorporates those portions of the Railways Clauses Consolidation Act, 1845, or of the Waterworks Clauses Act, 1847, which relate to mines and minerals. These are known respectively as the railway mining code and the waterworks mining code, but inasmuch as the railway code in the Act of 1845 has been superseded, so far as railways are concerned by a new code (d), the earlier code is in this title referred to as “the old railway mining code” to avoid ambiguity.

The old railway mining code and the waterworks mining code empower statutory undertakers to purchase land without mines or minerals, except so far as the acquisition of such mines or minerals is necessary for the authorised works, postponing the payment of compensation for mines required to be left unworked for support, until the minerals under or adjacent to the works are intended to be gotten. This procedure is that which is normally pursued, although the codes do not prohibit the purchase of mines and minerals with the land if the undertakers so desire. But if a railway company purchase a stratum of minerals lying beneath the railway, in lieu of paying compensation for requiring them to be left unworked, they do not acquire any additional right of support from strata subjacent or adjacent to that purchased by them (e). [854]

The statutory provisions as to mines contained in the Railways Clauses Consolidation Act, 1845 (f), were originally intended to apply only to the construction of railways by railway companies (g), and have now as respects railways been superseded by a new code in the Mines (Working Facilities and Support) Act, 1923 (h), but as the new code extends only to railways it need not further be considered here. Provision had, however, been made by several Acts of Parliament for the incorporation of the old railway mining code in orders, made under those Acts, authorising the compulsory purchase of lands by local authorities for purposes other than railways. This code must be incorporated, subject to necessary adaptations, and to modifications as to the assessing tribunal:

- (i.) In provisional orders made by the M. of H. which authorise a county council or borough or district council to purchase land compulsorily where a power of compulsory purchase is conferred by the L.G.A., 1933, or by any enactment or statutory order in force before June 1, 1934, and incorporating or applying sect. 176 of the P.H.A., 1875 (i). [855]

(c) Lands Clauses Consolidation Act, 1845, ss. 18, 21; 2 Statutes 1120, 1121.

(d) See *post*.

(e) *London and North Western Rail. Co. v. Howley Park Coal and Cannel Co.*, [1911] 2 Ch. 97, affirmed by H. L., [1913] A. C. 11; 11 Digest 152, 345.

(f) Ss. 77—85; 14 Statutes 61—64.

(g) *Ibid.*, s. 1; 14 Statutes 30.

(h) Ss. 15, 16; 14 Statutes 389—398.

(i) L.G.A., 1933, s. 160; 26 Statutes 393.

- (ii.) In orders of a county council confirmed by the M. of H. which authorise a county council to acquire land compulsorily for a parish council (*k*). [856]
- (iii.) In provisional or other orders made under the powers of any enactment passed or of any statutory order made after June 1, 1934, empowering the M. of H. to authorise the compulsory purchase of land by any local authority other than a parish council, by means of a provisional order made by the Minister, or an order confirmed by him (*l*). [857]

Where any of the orders above-mentioned is a provisional order, the waterworks mining code (*m*) is, in addition to the old railway mining code, to be deemed to be incorporated with the provisional order, if it relates to the construction or maintenance by the council of a borough or district of works of sewerage, drainage, sewage disposal, lighting or water supply (*n*). [858]

- (iv.) In orders confirmed by the Board of Education authorising a compulsory purchase of land by a local education authority for education purposes (*o*). [859]
- (v.) In orders confirmed by the M. of H. authorising a compulsory purchase by a local authority of land for housing (*p*). [860]
- (vi.) In orders confirmed by the Board of Education authorising a compulsory purchase of land by a local education authority for public libraries (*q*). [861]
- (vii.) In orders made by the M. of A. authorising a compulsory purchase or hiring of land for small holdings or allotments (*r*). [862]
- (viii.) In compulsory purchase orders confirmed by the M. of H. authorising a responsible authority to acquire land compulsorily for purposes of a planning scheme (*s*). [863]
- (ix.) In orders confirmed by the M. of T. authorising a compulsory purchase of land for the purpose of works for the relief of unemployment (*t*). [864]

It is the practice of the M. of T. in making an order authorising the construction of a light railway, wholly or partly on land not forming part of a highway, to insert a provision in the order applying the old railway mining code (*u*).

(*k*) L.G.A., 1933, s. 168; 26 Statutes 398.

(*l*) *Ibid.*, ss. 160, 161, Sched. VI.; 26 Statutes 393, 394, 508. These provisions do not apply to orders authorising a compulsory purchase of land under the Acts mentioned in Sched. VII. to the L.G.A., 1933, or under any local Act; see s. 179 (*f*) and (*g*) and title ACQUISITION OF LAND (OTHER THAN COMPULSORY) in Vol. I., where a list of the Acts referred to will be found on pp. 56, 57.

(*m*) Waterworks Clauses Act, 1847, ss. 18—27; 20 Statutes 192—196.

(*n*) P.H.A. 1875 (Support of Sewers) Amendment Act, 1883; 13 Statutes 798, see *post*.

(*o*) Education Act, 1921, s. 111, Sched. V.; 7 Statutes 190, 223; Board of Education (Compulsory Purchase) Regulations 1925 (S.R. & O., 1925, No. 1236).

(*p*) Housing Act, 1925, s. 64; 13 Statutes, 1039; Housing Act, 1930, ss. 10, 23, 50, Sched. II., Part I.; 23 Statutes 404, 415, 430, 438.

(*q*) Public Libraries Act, 1919, s. 6; 13 Statutes 969; Board of Education (Compulsory Purchase) Regulations, *supra*.

(*r*) Small Holdings and Allotments Act, 1908, s. 39, Sched. I.; 1 Statutes 266, 280.

(*s*) Town and Country Planning Act, 1932, s. 25, Sched. III., Part I.; 25 Statutes 502, 529.

(*t*) Unemployment (Relief Works) Act, 1920, s. 1; 20 Statutes 652.

(*u*) Light Railways Acts, 1896, s. 11; 14 Statutes 256; Railways Act, 1921, s. 68; 14 Statutes 362. Orders authorising the construction of light railways

The waterworks mining code (a) was originally intended to be incorporated with local Acts authorising works for the supply of towns with water (b), but has been also applied with modifications to the construction and maintenance by local authorities of works of sewerage, drainage, sewage disposal, lighting or water supply under the P.H.A., 1875, or any local Act or provisional order (c).

Both mining codes apply to mines of coal, ironstone, slate or other minerals (d). The words "mines" and "minerals," are not capable of exact definition, and their precise meaning must often depend on the circumstances of the particular case (e). Generally speaking, the words are to be interpreted in the widest sense that can properly be given to them and comprise all beds or strata of minerals without reference to the methods of working them (f). Common clay surface or subsoil, and clay having no commercial value and stone unfit for use are not mines of minerals excepted by the codes, and constitute part of the land taken (g).

Among the substances which have been held to be mines of minerals are stone obtained by quarrying (h), china clay (i), fireclay (k), clay procured by surface working (l), oil shale (m) and limestone (n).

wholly on highways generally provide that s. 59 of the Tramways Act, 1870; 20 Statutes 29, shall apply to the undertaking, thus taking away the common law right of the undertaker to compensation for damage occasioned by working mines or minerals in the usual and ordinary course.

(a) Waterworks Clauses Act, 1847, ss. 18—27; 20 Statutes 192—196.

(b) See the preamble to the Act of 1847.

(c) P.H.A. 1875 (Support of Sewers) Amendment Act, 1883; 13 Statutes 798, see *post*. It will be seen that the scope of the Act is far wider than its short title suggests.

(d) Railways Clauses Consolidation Act, 1845, s. 77; 14 Statutes 61; Waterworks Clauses Act, 1847, s. 18; 20 Statutes 192. The Mines (Working Facilities and Support) Act, 1923; 14 Statutes 389, relates to minerals, but this term is not defined. Some of the decisions later cited were given under the Railways Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 33), s. 70, which is in similar terms to the corresponding English code.

(e) *Symington v. Caledonian Rail. Co.*, [1912] A. C. 87; 11 Digest 150, l.

(f) *Midland Rail. Co. and Kettering, Thrapston and Huntingdon Rail. Co. v. Robinson* (1889), 15 App. Cas. 19; 11 Digest 150, 328.

(g) *Glasgow Corpn. v. Farie* (1888), 13 App. Cas. 657; 11 Digest 151, 337; *Great Western Rail. Co. v. Blades*, [1901] 2 Ch. 624; 11 Digest 150, 331; *Re Todd, Birleston & Co. and North Eastern Rail. Co.*, [1903] 1 K. B. 603; 11 Digest 150, 332. See *George Skey & Co., Ltd. v. Parsons* (1909), 25 T. L. R. 708; 34 Digest 609, 79. Sandstone has been held not to be a mineral within the codes: *North British Rail. Co. v. Budhill Coal and Sandstone Co.*, [1910] A. C. 116; 11 Digest 151, 335, but see *contra Greville v. Hemingway* (1902), 87 L. T. 443; 34 Digest 609, 78. It was suggested in *Heat v. Gill* (1872), 7 Ch. App. 699; 34 Digest 606, 41, that the question whether a substance could be worked at a profit was an element to be considered in deciding whether it was a mineral within the mining code, but this contention cannot be supported; *Glasgow Corpn. v. Farie*, *supra*, notwithstanding the reference to "beneficial working" in s. 78 of the Railways Clauses Consolidation Act, 1845, *supra*; *Midland Rail. Co. and Kettering, etc. Rail. Co. v. Robinson*, *supra*.

(h) *Midland Rail. Co. v. Checkley* (1867), L. R. 4 Eq. 19; 11 Digest 151, 338.

(i) *Great Western Rail. Co. v. Carpalla United Clay Co.*, [1910] A. C. 83; 11 Digest 151, 333.

(k) *Caledonian Rail. Co. v. Glenboig Union Fireclay Co.*, [1911] A. C. 290; 11 Digest 151, 334.

(l) *Midland Rail. Co. v. Haunchwood Brick and Tile Co.* (1882), 20 Ch. D. 552; 11 Digest 150, 329; *Ruabon Brick and Terra Cotta Co. v. Great Western Rail. Co.*, [1893] 1 Ch. 427; 11 Digest 155, 364.

(m) *Linlithgow (Marquess) v. North British Rail. Co.*, [1914] A. C. 820; 11 Digest 151, t; 161, 401.

(n) *Dixon v. Caledonian and Glasgow and South Western Rail. Cos.* (1880), 5 App. Cas. 820; 11 Digest 155, 366.

The waterworks code provides that the undertakers shall cause a survey and map showing all pipes, conduits and underground works to be made within six months of the construction of the works, on a scale not less than one foot to a mile. Corrections and additions are to be made within six months of any alteration or addition to the underground works, and the map is to bear the date of the last correction. It is to be kept at the office of the undertakers, and copies thereof or of the relevant portions must be deposited with the clerk of the county council, and the parish clerk of the parish in which the works are situate, or if the parish has a separate parish council with the clerk of the parish council, or if a rural parish has not a separate parish council with the chairman of the parish meeting (o). The map is to be open to the inspection of persons interested on payment of a fee of 1s. and of a further fee of 1s. for every hour during which the inspection continues after the first hour, and from the copies, but not from the original, copies and extracts may be made by such persons (p).

[865]

The preparation and deposit of the map is a condition precedent to the right of the undertakers to claim the benefits of the code, and in so far as the code excludes the operation of the common law, the undertakers, if the conditions relating to plans have not been complied with, cannot avail themselves of the common law right of support within the prescribed area, nor recover damages for injury caused by the ordinary and usual working of mines within that area (q). [866]

The area within which the mining codes are operative is the area subjacent to the works and adjacent thereto for the distance prescribed by the special Act, or if no distance is there prescribed then forty yards from the works (r). [867]

Statutory undertakers may purchase lands for the authorised works excepting the mines thereunder, and no mines of minerals pass on the conveyance of such lands unless they are expressly purchased, or unless they are necessary to be dug or carried away or used in the execution of the works (s). Thus the codes provide for the application of a special rule of construction to conveyances which amounts to an inversion of the ordinary rules of construction of such documents. [868]

On a purchase of land without the mines, no compensation becomes immediately payable for severance or injurious affection of the mines, though compensation may be claimed for injury to the mining works, as for example, the necessity of incurring extra expenses in working the mines (t). [869]

(o) Waterworks Clauses Act, 1847, ss. 19, 20, 21; 20 Statutes 193; as amended by the L.G.A., 1888, s. 83 (6); 10 Statutes 754. In relation to the deposited copies, the Parliamentary Documents Deposit Act, 1837; 12 Statutes 472, applied, see s. 21, but the whole of that Act has been repealed, except as to London, by L.G.A., 1933, and replaced by s. 230 of that Act; 26 Statutes 453.

(p) L.G.A., 1933, s. 280 (2); 26 Statutes 454.

(q) *South Staffordshire Waterworks Co. v. Mason (R.) & Sons* (1886), 56 L. J. (Q. B.) 255; 11 Digest 153, 354.

(r) Railways Clauses Consolidation Act, 1845, s. 78; 14 Statutes 61; Waterworks Clauses Act, 1847, s. 22; 20 Statutes 194.

(s) Railways Clauses Consolidation Act, 1845, s. 77; 14 Statutes 61; Waterworks Clauses Act, 1847, s. 18; 20 Statutes 192. Use in construction of the works means use in the construction of works on the land from which the minerals are extracted, and not elsewhere, *Tiverton and North Devon Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480; 11 Digest 219, 1035.

(t) *Whitehouse v. Wolverhampton and Walsall Rail. Co.* (1869), L. R. 5 Exch. 6; 11 Digest 157, 373.

If the owner, lessee or occupier of mines not purchased has a *bona fide* intention (u) of working them within the prescribed area, he must give notice in writing to the undertakers thirty days before the commencement of working (a); thereupon the undertakers may cause the mines to be inspected, and if it appears to them that the working is likely to damage their works, and if they are willing to make compensation for such mines or part thereof then the owner, lessee or occupier must not work or get the same (b). When undertakers give notice of their willingness to make compensation, their right to have the mines left unworked is complete (c). [870]

If the undertakers give notice of their willingness to make compensation, all parties having an interest in the mines in respect of which such notice is given are to be compensated for the loss which they sustain by reason of the mines being left unworked (d). In case of dispute the amount of compensation is to be settled in accordance with the provisions of the Lands Clauses Acts (e).

The mines may be worked if no notice of willingness to treat is given within thirty days, but such working must not be in an unusual manner and damage to the authorised works by improper working is to be made good by the mine owners (f).

The working may be by underground or surface operations according to the usual method of getting minerals in the district (g), and they

(u) *Midland Rail. Co. and Kettering, Thrapston and Huntingdon Rail. Co. v. Robinson* (1889), 15 App. Cas. 19; 11 Digest 150, 328.

(a) For form of notice, see 9 Ency. Forms (2nd ed.), p. 131. A notice may be given by the owner of mines although it is not his intention to work the mines himself, but only by his lessees or licensees, see *Midland Rail. Co., etc. v. Robinson*, *supra*.

(b) Railways Clauses Consolidation Act, 1845, s. 78; 14 Statutes 61; Waterworks Clauses Act, 1847, s. 22; 20 Statutes 194. For form of counter notice to mine owner, see 9 Ency. Forms (2nd ed.), p. 131.

(c) *Great Northern Rail. Co. v. Inland Revenue Commissioners*, [1901] 1 K. B. 416; 11 Digest 155, 362. If the undertakers purchase land together with some of the underlying strata, the mine owner cannot obtain compensation for ungotten minerals in the strata not conveyed, until the time arrives for working the same; *Re Gerard (Lord) and London and North Western Rail. Co.*, [1895] 1 Q. B. 459; 11 Digest 152, 339.

(d) *Ibid. Smith v. Great Western Rail. Co.* (1877), 3 App. Cas. 165; 11 Digest 156, 368. Where undertakers had works some of which had a common law right to support and others had no such right, and in reply to a notice of intention to work mines they gave notice of willingness to make compensation, it was held that, having elected to put in force the procedure provided by the Act, they were bound to pay compensation as fixed by arbitration; *Edinburgh and District Water Trustees v. Clippens Oil Co.* (1902), 87 L. T. 275; 11 Digest 157, 379.

(e) *R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512; 11 Digest 156, 371.

(f) Where the old railway mining code applies, the working of the mines must be carried out in a proper manner and according to the usual manner of working in the district; Railways Clauses Consolidation Act, 1845, s. 79; 14 Statutes 62; where the waterworks code applies the mines may be worked and drained by means of engines or otherwise "as if this Act and the special Act had not been passed," and no wilful damage must be done and the mines must not be worked in an unusual manner; Waterworks Clauses Act, 1847, s. 23; 20 Statutes 194. The meaning to be attached to the words "as if this Act and the special Act had not been passed" is doubtful, see the remarks of VAUGHAN WILLIAMS, L.J., in *Manchester Corp'n. v. New Moss Colliery, Ltd.*, [1906] 2 Ch. 564, at p. 573. The words do not occur in the railway codes.

(g) *Great Western Rail. Co. v. Bennett* (1867), L. R. 2 H. L. 27; 11 Digest 152, 349; *Midland Rail. Co. v. Haunckwood Brick and Tile Co.* (1882), 20 Ch. D. 552; 34 Digest 603, 3; *Midland Rail. Co. and Kettering, Thrapston and Huntingdon Rail. Co. v. Robinson*, *supra*. In *Midland Rail. Co. v. Miles* (1886), 33 Ch. D. 632; 19 Digest 100, 628, it was held that marketable clay was a mineral and might be gotten

may be worked notwithstanding that the getting of the minerals is likely to damage the authorised works, so long as the method of working is proper and necessary (*h*).

The undertakers may, at any time after working within the prescribed area has been begun, give a counter notice of their willingness to make compensation and so stop further working if through inadvertence or misconception, or from any other cause consistent with good faith, the thirty days have been permitted to lapse (*i*). [871]

When mines extend on both sides of the works, and mining under the works is prevented by counter notice, the mine owner may make airways, headways, gateways or water levels through the strata the working of which is prevented, so as to ventilate, drain and work the mines, but no passage must exceed the width and height of eight feet unless otherwise prescribed by the special Act. No shaft or passage is to be made upon the works so as to injure them, nor, in cases where the old railway code applies, so as to impede passage on the works (*k*).

Where mines are thus intersected by the works, the undertakers are liable to make compensation from time to time for all additional expenses and losses incurred by the severance of the surface or by interruption of continuous working, or by working in such manner as not to injure the works, in cases where the old railway mining code applies; or under restrictions contained in the special Act and the waterworks mining code where that code is incorporated (*l*). Compensation must also in such cases be paid for minerals within the prescribed area, not purchased by the statutory undertakers, which cannot be obtained by reason of the making and maintaining of the works, and further, where the waterworks mining code applies, by reason of apprehended injury from the working thereof. Compensation so payable is to be assessed, in case of dispute, by arbitration and not by a jury; the arbitration, where the waterworks mining code is incorporated, is to be subject to the provisions of the Lands Clauses Acts. [872]

Under the old railway mining code, if an owner or occupier of land (not being the owner, lessee or occupier of the subjacent mines) sustains loss or damage by the making of an airway or other work which would not have been necessary but for the working of mines having been prevented by statutory undertakers, they are to make full compensation to him for such loss or damage (*m*). There is no similar provision in the waterworks mining code. [873]

Statutory undertakers may, on giving twenty-four hours' notice, enter on any lands near their works, wherein mines are being worked or supposed to be, for ascertaining whether they are being or have been worked so as to damage the works (*n*). [874]

by open workings, but there were special circumstances relating to covenants between the parties which render the case one of minor importance as a precedent.

(*h*) *Fletcher v. Great Western Rail. Co.* (1860), 29 L. J. (Ex.) 253; 11 Digest 155, 361; *Ruabon Brick and Terra Cotta Co. v. Great Western Rail. Co.*, [1893] 1 Ch. 427; 11 Digest 155, 364.

(*i*) *Dixon v. Caledonian and Glasgow and South Western Rail. Cos.* (1880), 5 App. Cas. 820; 11 Digest 155, 366.

(*k*) Railways Clauses Consolidation Act, 1845, s. 80; 14 Statutes 63; Waterworks Clauses Act, 1847, s. 24; 20 Statutes 195.

(*l*) Railways Clauses Consolidation Act, 1845, s. 81; 14 Statutes 63; Waterworks Clauses Act, 1847, s. 25; 20 Statutes 195. As to the effect of the Acquisition of Land (Assessment of Compensation) Act, 1919, on these provisions, see title COMPULSORY PURCHASE OF LAND.

(*m*) Railway Clauses Consolidation Act, 1845, s. 82; 14 Statutes 63.

(*n*) *Ibid.*, ss. 83, 84; 14 Statutes 64; Waterworks Clauses Act, 1847, s. 26;

The waterworks code provides that nothing therein or in the special Act is to prevent the undertakers from being liable to any action or other legal proceeding to which they would have been liable, for any damage or injury to mines caused by the authorised works, if the same had not been constructed or maintained under the statutory powers (*o*). This has the effect of continuing the undertakers' common law liability, if they do not give a counter-notice, and make compensation (*p*), and, as a consequence of working, damage to the undertakers' works entails damage to the mine. [875]

Common Law Rights and Liabilities.—In considering the rights of owners of mines to compensation, it is necessary to ascertain the extent of the common law rights of the undertakers both within and beyond the prescribed area. The extent of the operation of the mining codes is definitely limited to the prescribed area (*q*), and a conveyance of land, where either of the mining codes applies, gives to undertakers, in the absence of agreement to the contrary, a common law right of support from the vendor's land beyond the prescribed area, if such support is necessary, not only for the land in its natural state, but with the authorised works placed upon it (*r*). Compensation may be claimed by the vendor for prospective loss of the right to work mines, but the claim must be made at the time of the taking of the land, and in the absence of agreement to the contrary, cannot afterwards be sustained (*s*). Rights so acquired are subject to any restriction of the vendor's rights existing at the time of the conveyance, for he cannot convey what does not belong to him (*t*).

A further right of support may be given to the purchasers, from land of other owners adjoining the vendor's land, but this is also limited as follows: if the vendor has no right of lateral support to the land, no such right passes to the purchaser; the right of support which passes is a right to lateral support of the land in its natural state, or any further right which may have been acquired by prescription or agreement. If the works placed upon the land do not increase the amount of lateral support required, the construction or maintenance of the works does not deprive the undertakers of the right to such support. If the weight or nature of the works necessitates additional support, then any right of support from adjoining lands which may have passed on a conveyance, ceases to exist, but a right to such additional support may be acquired by prescription.

If a right of support is acquired by undertakers from lands or mines other than those of the vendor, no compensation is payable, because it is a right attaching to the land which they have purchased and paid for.

Although the mining codes are limited in their operation to the areas prescribed by the special Act or by the codes themselves, they do not within those areas entirely exclude the operation of the common law rules as to support.

20 Statutes 195. The penalty on refusal to permit inspection provided in the old railway mining code (s. 84) is not recoverable where the waterworks code applies.

(*o*) Waterworks Clauses Act, 1847, s. 27; 20 Statutes 196.

(*p*) *Ibid.*, s. 22, *supra*.

(*q*) This limitation does not extend to the waterworks code as applied to "sanitary works." See *post*, "Support of Sewers and other Sanitary Works."

(*r*) *Howley Park Coal and Cannel Co. v. London and North Western Rail. Co.*, [1913] A. C. 11; 11 Digest 153, 353.

(*s*) *Glamorganshire Canal Navigation Co. v. Nixon's Navigation Co., Ltd.* (1901), 85 L. T. 53; 11 Digest 158, 384.

(*t*) See *Pountney v. Clayton* (1883), 11 Q. B. D. 820; 11 Digest 288, 2174.

In the case of *New Moss Colliery, Ltd. v. Manchester Corpn.* (u) the corpn. acquired land and subjacent mines for their waterworks, under a special Act (in which the waterworks code was incorporated) which empowered them to acquire land by agreement but not compulsorily.

The corpn. subsequently obtained a further Act, again incorporating the waterworks code, empowering them to acquire land compulsorily and to establish waterworks thereon, including the area of the land previously purchased. Under these powers they acquired additional land adjoining that formerly purchased, and the conveyance contained a reservation of the coal mines (which were subject to a lease) with a right to work the same without making compensation. Waterworks were constructed on both parcels of land. The lessees thereafter gave notice of intention to work the mines, whereupon the corpn., without giving any counter-notice, brought an action for an injunction to restrain the working, and claimed a right of support to the land which they had purchased by agreement. It was held that the common law right to lateral support of the land previously purchased by the corpn., which right it had always possessed from the adjoining land, was not affected by the provisions of the code, and that the corpn. were entitled to an injunction restraining the lessees of the mines from working within or beyond forty yards round the waterworks, so as to damage the land in respect of which support was claimed. Thus the corpn. obtained a right of support to the whole of the works on both parcels of land without payment of compensation. [876]

Support of Sewers and other Sanitary Works.—The P.H.A., 1875, authorises the construction and maintenance of various works for sanitary purposes by borough and district councils on land acquired by a council for the purpose; and further authorises the execution of certain works such as the laying of sewers and water-mains, without the necessity of purchasing the land in which they are laid (a). The Act of 1875 did not incorporate either of the mining codes, nor was any provision made for their incorporation with Provisional Orders authorising the compulsory purchase of land for the purposes of the P.H.A., 1875 (b).

In 1881 it had been held that the P.H.A., 1875, imposed upon landowners through whose land a sewer is constructed, an obligation to provide subjacent support, and gave to them a right to immediate compensation for being deprived of power to work subjacent mines (c), the ground of the decision being that where the Legislature confers a power it means also to confer all incidental rights without which the power would be unavailable.

(u) [1908] A. C. 117; 11 Digest 154, 356.

(a) As to works of sewerage and drainage, see ss. 13—34; 13 Statutes 631—640; as to lighting, see ss. 161—163; 13 Statutes 692, 693; as to waterworks, see ss. 51—67; 13 Statutes 647—653.

(b) See s. 176; 13 Statutes 700; repealed by L.G.A., 1933, s. 307, Sched. II., Part I.; 26 Statutes 469, 516.

(c) *Re Dudley Corpn.* (1881), 8 Q. B. D. 86; 11 Digest 158, 381. This case only dealt with subjacent mines, but although *obiter*, some doubts were expressed as to the application of this principle to lateral support, those doubts were probably unfounded, and it is almost certain that the local authority were entitled to any necessary lateral support from the mines, coupled with a liability to pay compensation therefor. See judgment of JESSEL, M.R., in *Roderick v. Aston L.B.* (1877), 5 Ch. D. 328; 11 Digest 292, 2201, and *Jary v. Barnsley Corpn.*, [1907] 2 Ch. 600, *per* PARKER, J., at pp. 613, 619; 41 Digest 86, 265.

The decision that all local authorities were liable to pay immediate compensation for support of sewers and other works authorised by the P.H. Acts, even though the mines in respect of which compensation was payable might not be worked for many years, was followed by the passing of the P.H.A., 1875 (Support of Sewers) Amendment Act, 1883 (*d*).

The Act applies not only to the support of sewers, but to the support of any building or work constructed by or vested in or under the control of a local authority under the powers or for the purposes of so much of the P.H.A., 1875, or of any general or local Act or Provisional Order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting or water supply, including any fixtures, pipes, fittings or apparatus connected with any such work and belonging to or used by the local authority, whether the land on, in, over or under which such work is situate is or is not vested in or occupied by the local authority, or is or is not wholly or partially dedicated to the public as a street, highway or public place. Any such building or work is referred to as a "sanitary work" (*e*). [877]

The Act provides that the waterworks mining code(*f*) shall be deemed to be incorporated in any Act or Provisional Order under which any sanitary work has been or is constructed or maintained whether passed or confirmed before or after August 25, 1883 (*g*). The code is, however, modified in its application in the following respects:

(i.) The words "the undertakers" refer to the local authority, and "the special Act" refers to the Act or order by which the sanitary works are authorised, and expressions relating to pipes, conduits or other works are deemed to refer to the sanitary work. [878]

(ii.) The local authority, by or with any notice of willingness to treat for or make compensation, or of intention to prevent or interfere with the working of any mines, may specify and define the nature and extent of support which they require to be left, and any such notice may extend to minerals beyond the distance of forty yards mentioned in the code or to such less distance as the local authority think fit. [879]

(iii.) Local authorities were allowed one year within which to make the necessary survey and map of their existing works (*h*). [880]

(iv.) Compensation money and costs are to be paid and borrowed under the powers with respect to the construction of the sanitary work given by the original Act or order. [881]

(v.) Local authorities may make agreements with owners, lessees or occupiers of, or persons working, mines for carrying into effect the purposes of the Act (*i*). [882]

The Act applies to sanitary works executed both before and after its passing. See definition of "sanitary work" in sect. 2. [883]

As to works executed before the Act, rights of support are not interfered with whether they were acquired by express statutory enactment, or by agreement or by prescription (*k*). The right acquired on a purchase was a right to vertical and lateral support, for the lands

(*d*) 13 Statutes 798.

(*e*) *Ibid.*, ss. 2, 3; 13 Statutes 798.

(*f*) Waterworks Clauses Act, 1847, ss. 18—27; 20 Statutes 192—196. See *ante*, p. 385.

(*g*) P.H.A., 1875 (Support of Sewers) Amendment Act, 1883, s. 3; 13 Statutes 798.

(*h*) It is not necessary that the map should contain reference to works in respect of which any right of support had been acquired before the passing of the Act; see s. 5; 13 Statutes 800.

(*i*) *Ibid.*, s. 3; 13 Statutes 798.

(*k*) *Ibid.*, s. 5; 13 Statutes 800.

and works, from the vendor's other land, subject to any restriction to which the vendor was himself subject, together with such right of support as the vendor possessed from other adjoining lands; the right acquired on the laying of mains or other works without purchase of land was a right to subjacent and probably also lateral support, coupled with a liability to make compensation for mines left unworked in order to give such support (*l*). In either case further rights may have been acquired by prescription (*m*).

In the case of both the above classes of works, there was no need to make the survey and deposit the map of the works within a year of the passing of the Act.

Thus the Act of 1883 contains a complete mining code, and except as is provided therein a local authority are not to be deemed to have acquired or to be bound to make compensation for any right of support for a sanitary work, as defined in the Act as against persons owning or having other interests in any mine (*n*).

The provisions prescribing the area to which the code is to apply, contained in the waterworks mining code, are eliminated, and the local authority are entitled to specify the nature and extent of the support which they require to be left, whether such support extends to minerals beyond forty yards or to a less distance. They are to specify the extent of the support required "by or with any notice . . . of willingness to treat for or make compensation, or of intention to prevent or interfere with the work of any mines" (*o*).

The interpretation of this provision gives rise to some difficulty because in the relative section of the waterworks code (*p*) there is no reference to the giving, or to the possibility of giving, notice of intention to prevent or interfere with the working of mines. The notice referred to must be assumed to be the statement of willingness to treat with the mine owner, referred to in sect. 23 of the Act of 1847 (*q*). A further difficulty arises, because a statement of willingness to treat can only be made under the code after a notice has been received from the mine owner of his intention to work. There is no authority upon the point, but it would appear that it is not imperative that a notice defining the extent of the support required should be given by or with a statement or notice of willingness to treat, but that the local authority may by notice specify and define the nature and extent of support which they require to be left, at any time before the mines are worked within the area which in their opinion is necessary to be retained unworked for the purpose of support. [884]

APPLICATION OF COMPENSATION MONEY

Payment into the Bank.—When land is acquired compulsorily from a person able and willing to furnish a good title and to give a proper assurance to the statutory undertakers, the usual procedure as between

(*l*) *Re Dudley Corpn.* (1881), 8 Q. B. D. 86; 11 Digest 158, 381; *Jary v. Barnsley Corpn.*, [1907] 2 Ch. 600; 41 Digest 36, 265; *Normanton Gas Co. v. Pope and Pearson* (1883), 52 L. J. (Q. B.) 629; 11 Digest 154, 359.

(*m*) See *ante*, "Common Law Rights and Liabilities."

(*n*) P.H.A., 1875 (Support of Sewers) Amendment Act, 1883, s. 4; 13 Statutes 799.

(*o*) *Ibid.*, s. 3 (2); 13 Statutes 799.

(*p*) Waterworks Clauses Act, 1847, s. 22; 20 Statutes 194.

(*q*) 20 Statutes 194.

vendor and purchaser is followed (*r*). But where (1) land is acquired compulsorily from a corp'n. or person under disability, whose only power of sale is derived from the Lands Clauses Consolidation Act, 1845, or the special Act, or (2) if the compensation in respect of permanent damage to the land of any such corp'n. or person amounts to or exceeds £200, it is to be paid into the Bank of England and is to remain so deposited until paid out for some duly authorised purpose (*s*).

It had been held (*t*) that the council of a metropolitan borough, who had not obtained the consent of the Local Government Board under sect. 6 (5) of the London Government Act, 1899 (*u*), to a sale of land to the rail. co., was within sect. 69 of the Act of 1845, and that the purchase money was payable into court under sect. 69. But sect. 177 of the L.G.A., 1933 (*x*), now provides that where any purchase money or compensation is payable in pursuance of Part VII. of that Act by a local authority in respect of land acquired from another local authority, the money may, if the M. of H. consents, be paid and applied as he may determine, instead of being paid into court. Sect. 129 of the Housing Act, 1925 (*a*), also contains a similar provision with respect to purchase money or compensation payable in pursuance of that Act.

It should be noted that sect. 177 of the Act of 1933 does not extend to London, and that the older procedure must be followed as between metropolitan borough councils, or as between such a council and the L.C.C.

Payment into the Bank of England is to be made in the name and with the privity of the Accountant-General of the Supreme Court (*b*), to be placed to his account there *ex parte* the promoters of the undertaking (describing them) and in the matter of the special Act, pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into court (*c*).

The undertakers may be compelled by mandamus to pay the money into the bank (*d*), though in a case where they had accepted the title the court permitted investment without payment into the bank (*e*). The court may order the money to be paid into the bank although it has actually been paid to the person under disability, or to some person on his behalf (*f*).

If the purchase money or compensation exceeds £20 but does not amount to £200, it may in like manner be paid into the bank, or it may lawfully be paid to two trustees nominated by the person entitled

(*r*) See title COMPULSORY PURCHASE OF LAND.

(*s*) Lands Clauses Consolidation Act, 1845, ss. 9, 69, 70; 2 Statutes 1117, 1135, 1136.

(*t*) *Ex parte Great Western Rail. Co.* (1909), 74 J. P. 21; 11 Digest 246, 1457.

(*u*) 11 Statutes 1229.

(*x*) 26 Statutes 403.

(*a*) 13 Statutes 1068.

(*b*) Lands Clauses Consolidation Act, 1845, s. 69; 2 Statutes 1135. The Accountant-General of the Supreme Court replaces the Accountant-General of the Court of Chancery mentioned in the Lands Clauses Acts (see Supreme Court of Judicature (Consolidation) Act, 1925, ss. 133, 135; 4 Statutes 183, 184).

(*c*) Supreme Court Fund Rules, 1927; S.R. & O., 1927, No. 1184, made under the Supreme Court of Judicature (Consolidation) Act, 1925, s. 146; 4 Statutes 186.

(*d*) *Barnett v. Great Eastern Rail. Co.* (1868), 18 L. T. 408; 16 W. R. 793; 11 Digest 234, 1235.

(*e*) *Re Milnes (a person of unsound mind)* (1875), 1 Ch. D. 28; 11 Digest 234, 1228.

(*f*) *London and North Western Rail. Co. v. Lancaster Corp'n.* (1851), 18 L. T. (O. S.) 132; 11 Digest 233, 1224.

to the rents and profits of the land in question. If the person entitled is an infant or a person of unsound mind or subject to any other incapacity, his guardian, committee or trustee may nominate the trustees to receive payment, but in such cases the undertakers must approve the trustees and be willing to pay the money over to them (g).

If the money payable to persons under disability does not exceed £20, it may be paid to the parties entitled to the rents and profits for their own use, or, as the case may be, to their respective guardians, trustees or committees (h).

Sums of money exceeding £20 which may be payable (i.) in respect of taking, using or interfering with any land, or (ii.) in lieu of accommodation works, or (iii.) for assenting to or not opposing the passing of the Bill authorising the taking of lands, and which are payable under a contract with any person not entitled to sell the lands absolutely for his own benefit, are to be paid into the bank, or to trustees, as in cases where compulsory powers have been exercised. The moneys are to be deemed to have been contracted to be paid for and on account of the several parties interested in the land as well in possession as in remainder, reversion or expectancy, whether the special Act is proceeded on or not, and no part thereof may be retained by the contracting party for his own use, unless the court or the trustees (as the case may be) think fit to allot to him a portion thereof as compensation for any injury, inconvenience or annoyance sustained by him independently of the actual value of the land taken or damage occasioned thereto (i).

If an owner of land or of an interest in land refuses to accept the purchase money or compensation which has been either awarded or agreed, or neglects or fails to make out a good title, or if he refuses to convey or release the lands as directed by the undertakers, or if he be absent from the kingdom and cannot be found after diligent inquiry, or if he fails to appear on an inquiry before a jury, the undertakers may pay the money into the Bank of England, and unless the land is vested in a person under disability it is to be deposited in the name and with the privity of the Accountant-General of the Supreme Court (k), to be placed to his account there to the credit of the parties interested in the lands subject to the control and disposition of the court (l).

As to payment into the bank, and subsequent procedure, when land is entered upon before purchase (m), see title COMPULSORY PURCHASE OF LAND, "Entry on lands before purchase." [885]

Subsequent Dealings with Moneys.—When money has been deposited in the bank in pursuance of any of the provisions (n) of the Lands

(g) Lands Clauses Consolidation Act, 1845, s. 71; 2 Statutes 1136.

(h) *Ibid.*, s. 72; 2 Statutes 1136.

(i) *Ibid.*, s. 73; *ibid.*, 1137. The intention of the section is as set out in the text above, though the language of the section is "very clumsy and artificial, if not unintelligible" (*Pole v. De la Pole* (1865), 34 L. J. (Ch.) 586, *per* KINDERSLEY, V.C., at p. 588; 11 Digest 234, 1232; 42 Digest 624, 249; *Taylor v. Chichester and Midhurst Rail. Co.* (1870), L. R. 4 H. L. 628; 11 Digest 167, 444).

(k) The Accountant-General of the Supreme Court replaces the Accountant General of the Court of Chancery mentioned in the Lands Clauses Acts (see note (b), *ante*, p. 895).

(l) Lands Clauses Consolidation Act, 1845, ss. 76, 107, 109, 111, 113, 117; 2 Statutes 1138, 1150—1154. If in such circumstances the land is vested in a person under disability the provisions of s. 69 of the Act of 1845 are to be observed (see *supra*).

(m) *Ibid.*, ss. 85—87; 2 Statutes 1142, 1143.

(n) *Charlton v. Rolleston* (1884), 28 Ch. D. 237; 11 Digest 253, 1585 (see *per* FRY, L.J., at p. 253).

Clauses Acts, the future application thereof is under the control of the Chancery Division of the High Court, and (unless paid in on entry before purchase) is generally no concern of the statutory undertakers, except in relation to the costs incurred in dealing therewith, though if they pay compensation to a party interested, they may themselves make application to the court for payment out of the money representing the interest of the party so compensated (*o*). The costs payable by statutory undertakers (including all reasonable charges and expenses) are those incurred (i.) in the purchase of the land which are not otherwise provided for (*p*); (ii.) in investing the moneys in government or real securities; (iii.) in reinvesting the same in the purchase of other lands; (iv.) in obtaining orders for payment of dividends and interest; and (v.) in obtaining orders for payment out of court of the principal moneys or securities (*q*).

The undertakers are not liable to pay costs for any of these purposes if the money has been deposited by reason of the wilful refusal of the person entitled thereto to receive the same, or to convey or release the land, or by reason of wilful neglect to make out a good title (*r*). As to what constitutes wilful refusal or neglect, it has been held that where a vendor insisted on payment of costs and purchase money before giving possession, there being a dispute as to the amount of costs, and refused the purchase money alone, such refusal was wilful (*s*). Failure to furnish a title, after request, within the prescribed time is a wilful neglect (*t*), and a refusal to convey because of doubts raised by the owner as to the validity of the order for purchase which had been duly made and confirmed under the Small Holdings and Allotments Act, 1908, is a wilful refusal (*u*).

There is, however, no wilful refusal if an owner disputes the validity of the award for reasons which are not capricious or unsubstantial (*a*), or if he is unable to convey because of unpaid incumbrances of larger amount than the compensation (*b*), or if the title to the land is confused or doubtful (*c*), or if, on advice of counsel, he disputes the right of the promoters to take the land (*d*).

The undertakers are not liable for costs occasioned by litigation

(*o*) *Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472; 11 Digest 128, 177, and see *Re Marriage, Ex parte London, Tilbury, etc., Rail. Co.* (1861), 9 W. R. 843; 11 Digest 250, 1536.

(*p*) As to vendor's costs otherwise provided for, see title COMPULSORY PURCHASE OF LAND.

(*q*) Lands Clauses Consolidation Act, 1845, s. 80; 2 Statutes 1140.

(*r*) *Ibid.*, and see s. 76; 2 Statutes 1138.

(*s*) *Re Turner's Estate and Metropolitan Rail. Act*, 1860 (1861), 5 L. T. 534; 11 Digest 255, 1616; 256, 1627.

(*t*) *Re Dublin Corpn., Ex parte Dowling* (1881), 7 L. R. Ir. 173; 11 Digest 264, s.

(*u*) S. 39; 1 Statutes 266; *Re Jones and Cardiganshire County Council* (1913), 57 Sol. Jo. 374; 11 Digest 255, 1617.

(*a*) *Re East India Docks and Birmingham Junction Rail. Act, Ex parte Bradshaw* (1848), 17 L. J. (Ch.) 454; 11 Digest 255, 1618; *Re Metropolitan District Rail. Co., Ex parte Lawson* (1869), 17 W. R. 186; 11 Digest 255, 1619.

(*b*) *Re Crystal Palace Rail. Co., Re Divers* (1855), 1 Jur. (N. S.) 995; 11 Digest 255, 1622.

(*c*) *Re Woodburn's Trust* (1865), 13 L. T. 237; 11 Digest 264, 1628.

(*d*) *Re Ryde Commissioners, Ex parte Dashwood* (1856), 26 L. J. (Ch.) 299; 11 Digest 255, 1623. For other instances, see *Re Windsor, Staines and South Western Rail. Act* (1850), 12 Beav. 522; 11 Digest 255, 1620; *Ex parte Railstone* (1851), 18 L. T. (o. s.) 134; 11 Digest 255, 1621; *Ex parte Birkbeck Freehold Land Society* (1883), 24 Ch. D. 119; 11 Digest 255, 1624; *Re St. Luke's Vestry, Middlesex and London School Board*, [1889] W. N. 102; 11 Digest 256, 1625; *Re Leeds Grammar School*, [1901] 1 Ch. 228; 11 Digest 256, 1626.

between adverse claimants (e), nor do they bear the costs of the settlement of a dispute as to ownership (f). So also where an adverse claim is made and subsequently withdrawn the costs incurred as a result of the dispute are not payable by the undertakers (g).

In addition to any costs for which the undertakers are liable under the provisions of the Lands Clauses Acts, the court has a discretion to award costs where no express provision is made for their payment (h).

The Rules of the Supreme Court do not, however, override the provisions of the special statutes giving special costs in particular cases (i).

Where the appearance of a person is necessary on the hearing of a petition or summons relating to money deposited, the costs are as a rule payable by the undertakers, but if parties are served with a copy of the petition or summons and appear, having no objection to make to the order asked for, they bear their own costs of appearance (k). Questions as to the incidence of costs of appearance of parties have formed the subject of numerous decisions of the courts (l).

If there is any doubt as to the necessity for the appearance of a party, the usual course is for the applicant to serve a copy of the petition or summons upon him accompanied by tender of thirty shillings for cost of obtaining advice whether he should appear or not, which amount, if the service is proper, is allowed in the costs (m). If no tender is made, the party effecting service is liable for respondent's cost of appearance (n).

Costs are not allowed against statutory undertakers if trustees, incumbrancers, persons entitled in reversion or others are served or appear unnecessarily (o), as, for example, a *cestui que trust* where trustees with power of sale apply for payment out (p), or persons entitled in remainder when a tenant for life applies for an order for payment of

(e) Lands Clauses Consolidation Act, 1845, s. 80. See, further, on this subject *post*, "Costs of Orders for Payment Out."

(f) *Hood v. West Ham Corpn., Re West Ham Corpn. Act* (1910), 74 J. P. 179; 11 Digest 271, 1984.

(g) *Re English (a lunatic)* (1865), 12 L. T. 561; 11 Digest 271, 1981; but see *Ex parte Palmer, Cox and Bellingham* (1849), 13 Jur. 781; 11 Digest 271, 1979 (where claimant appeared and consented, the company having taken with knowledge of the dispute).

(h) Supreme Court of Judicature (Consolidation) Act, 1925, s. 50; 13 Statutes 216; R. S. C., Ord. 65, rr. 1, 23; *Re Fisher*, [1894] 1 Ch. 450; Digest, Practice 859, 4039; *Re Schmarr*, [1902] 1 Ch. 326; 11 Digest 255, 1607. In such a case the Settled Land Act, 1925, s. 76; 17 Statutes 914, does not take away the discretion of the court as to costs; *Re Hambury* (1883), 52 L. J. (Ch.) 687; 11 Digest 254, 1600 (costs of interim investment exceeding cost of purchase of government securities).

(i) *Hasker v. Wood* (1885), 54 L. J. (Q. B.) 419; 16 Digest 187, 938; *Reeve v. Gibson*, [1891] 1 Q. B. 652; 16 Digest 188, 940.

(k) *Sidney v. Wilmer* (No. 2), *Re Clay Cross Waterworks Act*, 1856 (1862), 31 Beav. 338; 11 Digest 267, 1886.

(l) See cases noted in 11 Digest 256, 258, 263, 266.

(m) R. S. C., Ord. 65, r. 27 (19); *Re Gore Langton's Estates* (1875), 10 Ch. App. 328; 11 Digest 263, 1805.

(n) *Somes v. Martin*, [1882] W. N. 113; 35 Digest 689, 4317.

(o) *Re Lancashire and Yorkshire Rail. Co., Wilson v. Foster* (1859), 28 L. J. (Ch.) 410; 11 Digest 263, 1809 (reinvestment, service of reversioner and trustees); *Re Whitfield (Incumbent)* (1861), 5 L. T. 343; 19 Digest 517, 3792 (reinvestment of purchase money of glebe lands; appearance of governors of Queen Anne's Bounty); *Campbell v. Holyland* (1877), 7 Ch. D. 166; 35 Digest 566, 2979 (appearance to ask for costs only).

(p) *Re East, Ex parte East* (1853), 22 L. T. (o. s.) 197; 11 Digest 251, 1561.

dividends (*q*) or for reinvestment in land (*r*); nor are such costs allowed if additional expense is incurred by an omission of the petitioner to serve the proper parties (*s*) or by reason of his delay (*t*). A person served because he had set up a claim which is unfounded bears his own costs (*u*).

To make the undertakers co-petitioners, even though this is done to save expense, is not a course approved by the court (*a*); they should be made respondents and served in the usual way. [886]

The costs payable on a petition are limited to the costs of proceeding by summons if that procedure would have been appropriate and less costly (*b*). Proceedings should normally be taken by summons, whatever the amount involved, where money has been deposited on entry on lands before purchase (*c*). [887]

Where an application is made which is only partially successful, the undertakers are only liable for the costs relating to that part of the application in respect of which an order is made (*d*). [888]

Undertakers are not ordered to pay the costs of more than one petition if one is sufficient (*e*).

If two or more statutory undertakers have paid money into court, the costs payable by them are apportioned equally and not rateably (*f*), but this rule is not applied if it would involve severe hardship and exceptions have been made where there was great inequality in the amounts paid in (*g*). Where there is such an inequality, costs which are readily apportionable, namely, *ad valorem* stamp duty, surveyor's fees, solicitor's scale costs and brokerage charges, are borne rateably and not in equal shares (*h*). [889]

Costs of Purchase of Lands.—The undertakers are liable for costs of conveyances of land by virtue of sects. 82, 83 of the Lands Clauses Consolidation Act, 1845 (*i*), though where money is paid into court the undertakers may be made liable for costs of purchase other than those provided for by those sections. Thus the costs of an apportionment of

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- (*g*) *Re Finch's Estate* (1866), 14 L. T. 394; 11 Digest 258, 1687.
 - (*r*) *Re Browne and Oxford and Blechley Junction and Buckinghamshire Rail. Acts, Ex parte Staples* (1852), 21 L. J. (Ch.) 251; 11 Digest 251, 1555.
 - (*s*) *Re Leigh's Estate* (1871), 6 Ch. App. 887; 11 Digest 239, 1329.
 - (*t*) *Re Clarke's Estate* (1882), 21 Ch. D. 776; 11 Digest 267, 1832.
 - (*u*) *Re Shrewsbury School* (1849), 1 Mac. & G. 85; Digest, Practice 942, 4828.
 - (*a*) *Re Charity of King Edward VI's Almshouses at Saffron Walden* (1868), 37 L. J. (Ch.) 664; 11 Digest 252, 1576.
 - (*b*) *Re Jolliffe's Estate* (1870), L. R. 9 Eq. 668; 11 Digest 250, 1537; *Re Bethlehem and Bridewell Hospitals* (1885), 30 Ch. D. 541; 30 Digest 294, 206. For cases in which costs of petition have been allowed, see 11 Digest 268, 269.
 - (*c*) Lands Clauses Consolidation Act, 1845, ss. 86, 87; 2 Statutes 1143; Direction of the Judges of the Chancery Division, February, 1907 (see Annual Practice, 1934, p. 1101).
 - (*d*) *Re Jacobs, Baldwin v. Pescott*, [1908] 2 Ch. 691; 11 Digest 264, 1826.
 - (*e*) *Re Broke's (Lord) Estates* (1863), 1 New Rep. 568; 11 Digest 269, 1937 (three petitions for investment of three funds together); *Re Gore Langton's Estates* (1875), 10 Ch. App. 328; 11 Digest 263, 1805 (two petitions for payment of dividends in each fund); *Re Pattison's Devised Estates, Re Pattison's Settled Estates* (1876), 4 Ch. D. 207; 11 Digest 269, 1940 (two petitions by same petitioners where MALINS, V.-C., said "the whole story might have been included in one statement").
 - (*f*) *Ex parte London (Bp.)* (1860), 29 L. J. (Ch.) 575; 11 Digest 270, 1943.
 - (*g*) *Ex parte Christchurch* (1861), 9 W. R. 474; 11 Digest 270, 1953 (costs of petition divided equally, those of reinvestment rateably); *Ex parte St. Bartholomew's Hospital (Governors)* (1875), L. R. 20 Eq. 369; 11 Digest 270, 1954, and see *Re Merton College* (1864), 10 L. T. 8; 11 Digest 270, 1947.
 - (*h*) *Ex parte London Corpn.* (1868), L. R. 5 Eq. 418; 11 Digest 271, 1962; *Re Bishopsgate Foundation*, [1894] 1 Ch. 185; 11 Digest 270, 1952.
 - (*i*) 2 Statutes 1141. See title COMPULSORY PURCHASE OF LAND.

rent may not be made payable by the undertakers (*k*). Other costs not otherwise provided for are the costs of obtaining the sanction of the Judge in Lunacy to a sale of land of a lunatic (*l*), and the costs of a petition and reference to the Master where land is the subject of an administration suit will also be payable by the undertakers (*m*). [890]

Costs of Interim Investments.—Pending the reinvestment of moneys paid into the bank in a purchase of other lands, the moneys may be invested in interim investments and the cost of such investments is payable by the undertakers, and this even though a contract for a reinvestment in land has been entered into, provided such a course is reasonable (*n*).

The liability to pay costs of interim investments does not relieve the undertakers from their liability to pay the costs of a subsequent permanent investment in land (*o*). There is no rule of practice that upon the application for a second interim investment the court in sanctioning the same will impose a condition that it is to be treated as a permanent investment and that the undertakers are not liable to pay the costs of any future investment (*p*), though usually only one interim investment is permitted (*q*).

Costs of a second interim investment on mortgage when the previous investment was in consols have on occasions been allowed where the parties were seeking a better investment and were not acting capriciously (*r*), and where a change of security was rendered necessary by a conversion scheme of the Government (*s*), but investment on mortgage may be treated as a permanent reinvestment (*t*).

Costs of reinvestment include broker's commission, and the official broker must be employed (*u*). It is usual for the broker's commission to be paid by the petitioner and recovered from the undertakers (*a*). [891]

Cost of Reinvestment in Land.—The cost of reinvestment in land is payable by the undertakers, even if the petitioner is absolutely entitled (*b*), unless there has been some wilful refusal or neglect on his part (*c*).

Reinvestment in freehold land, of money paid for leaseholds has been allowed (*d*) and redemption of land tax has been treated as

(*k*) *Re London, Brighton and South Coast Rail. Co., Ex parte Flower* (1866), 1 Ch. App. 599; 11 Digest 256, 1640.

(*l*) *Re Taylor* (1849), 1 H. & Tw. 432; 33 Digest 210, 1164.

(*m*) *Picard v. Mitchell* (1850), 12 Beav. 486; 11 Digest 256, 1630.

(*n*) *Re Liverpool, etc. Rail.* (1853), 17 Beav. 392; 11 Digest 257, 1659.

(*o*) *Re Gaselee*, [1901] 1 Ch. 923, *per* BUCKLEY, J., at p. 928.

(*p*) *Re Nepton's Charity* (1906), 22 T. L. R. 442; 11 Digest 259, 1699.

(*q*) *Re Wilkinson's Estate* (1868), 37 L. J. (Ch.) 384; 11 Digest 258, 1694; *Re Gedling Rectory* (1885), 53 L. T. 244; 11 Digest 258, 1698.

(*r*) *Reading v. Hamilton, Re Luton, Dunstable and Welwyn Junction Rail. Act*, 1855 (1862), 5 L. T. 628; 11 Digest 257, 1660; *Re Blyth's Trusts* (1873), L. R. 16 Eq. 468; 11 Digest 257, 1664; *Re Sewart's Estate* (1874), L. R. 18 Eq. 278; 11 Digest 258, 1697.

(*s*) *Re Brown* (1890), 63 L. T. 131; 11 Digest 237, 1273; and see *Re Gaselee*, *supra*, *per* BUCKLEY, J., at p. 930.

(*t*) *Re Gedling Rectory*, *supra*.

(*u*) Cf. *Ex parte Bolton Junction Rail. Co.* (1876), 24 W. R. 451; 36 Digest 281, 288.

(*a*) *Re Magdalen College, Oxford*, [1901] 2 Ch. 786; 11 Digest 266, 1865.

(*b*) *Re Jones's Trust Estate* (1870), 39 L. J. (Ch.) 190; 11 Digest 259, 1703.

(*c*) See *ante*, p. 397.

(*d*) *Re Parker's Estate* (1872), L. R. 13 Eq. 495; 11 Digest 259, 1704.

equivalent to reinvestment in land (*e*), though generally the provisions of sect. 80 (*f*) are construed strictly, and undertakers bear only the cost of such reinvestments as are mentioned in the section. They are not, *e.g.* liable for the cost of paying off incumbrances, or the purchase of a leasehold interest in lands to be held on the same trusts as the land taken (*g*), nor for the cost of reinvestment in the erection of new buildings (*h*), and payments for these purposes are as a rule treated as payments out of court, the undertakers paying the costs of the petition or summons (*i*).

The costs payable are limited to costs payable by a purchaser on an open contract (*k*), though in cases of large investments the undertakers may be charged with the expenses of submitting special points on title to the petitioners' own counsel (*l*). Where a new scheme for a charity is necessary in order to provide for the proposed reinvestment, the undertakers are not liable for the costs of the scheme (*m*) unless the new scheme is a direct result of the taking of the land (*n*). Costs are payable for the enrolment of a conveyance of lands purchased for reinvestment by a charity (*o*).

Where the owners of the fund purchase for reinvestment other land of a greater value than the fund in court the undertakers pay the costs of reinvestment, except so far as they are increased by reason of the purchase money exceeding the fund (*p*), and the same rule applies where the additional amount of purchase money is in another fund in court which is included in the petition (*q*).

On a petition for reinvestment which is not sanctioned by the court, the undertakers do not pay costs, but may be allowed their costs out of the fund (*r*). Where a proposed reinvestment is abandoned owing to a faulty title or to the expense of making a good title, the undertakers pay the costs incurred if they have been sanctioned by the court (*s*).

(*e*) *Re London, Brighton and South Coast Rail. Co.* (1854), 18 Beav. 608; 11 Digest 262, 1733; *Re Bethlem Hospital* (1875), L. R. 19 Eq. 457; 11 Digest 262, 1734; *Ex parte St. Katharine's Hospital* (1881), 17 Ch. D. 378; 11 Digest 262, 1781 (special Act authorising reinvestment in "lands tenements and hereditaments").

(*f*) 2 Statutes 1140.

(*g*) *Re Manchester, Sheffield, etc., Rail. Co., Ex parte Sheffield Corpn.* (1855), 25 L. J. (Ch.) 587; 11 Digest 261, 1772; *Re Mark's Trusts*, [1877] W. N. 63; 11 Digest 262, 1774, but *secus* where leaseholds are bought under the Episcopal and Capitular Estates Act, 1851; 6 Statutes 1081; *Ex parte Manchester (Dean and Canons)* (1873), 28 L. T. 184; 11 Digest 262, 1775. The Act of 1851 was made a permanent Act by the Expiring Laws Act, 1922, s. 1; 18 Statutes 1178.

(*h*) *Re Oxford, Worcester and Wolverhampton Rail. Co., Ex parte Melkard* (1859), 29 L. J. (Ch.) 245; 11 Digest 261, 1754.

(*i*) *Re Lathropp's Charity* (1866), L. R. 1 Eq. 467; 11 Digest 261, 1763.

(*k*) *Ex parte Christ's Hospital Governors* (1875), L. R. 20 Eq. 605; 11 Digest 262, 1786; *Ex parte Thawie's Charity Trustees*, [1905] 1 Ch. 403; 11 Digest 263, 1801.

(*l*) *Re Jones's Settled Estate* (1858), 27 L. J. (Ch.) 706; 11 Digest 262, 1794.

(*m*) *Re St. Paul's Schools, Finsbury* (1883), 52 L. J. (Ch.) 454; 11 Digest 256, 1635.

(*n*) *Re Wood Green Gospel Hall Charity, Ex parte Middlesex County Council*, [1909] 1 Ch. 263; 11 Digest 256, 1636.

(*o*) *Ex parte Christ's Hospital Governors* (1864), 10 L. T. 262; 11 Digest 263, 1799; *Ex parte Jesus College, Cambridge* (1884), 50 L. T. 583; 11 Digest 251, 1543.

(*p*) *Re Clark*, [1906] 1 Ch. 615; 11 Digest 260, 1736, and cases (some otherwise unreported) there cited.

(*q*) *Re Lynn and Fakenham Rail. (Extension) Act* (1909), 100 L. T. 432; 11 Digest 268, 1895.

(*r*) *Re Hardy's Estate* (1854), 2 Eq. Rep. 634; 11 Digest 260, 1744.

(*s*) *Re Carney's Trusts* (1872), 26 L. T. 308; 11 Digest 260, 1747.

If, after sanction for reinvestment in land has been obtained, the petitioner abandons the purchase, costs of investigating title are not payable by the undertakers (*t*). The court will direct the payment of costs for separate reinvestments in different parcels of land if the scheme of reinvestment is in the interest of the parties (*u*). [892]

Costs of Orders for Payment of Dividends.—The undertakers pay the costs of obtaining orders for payment of dividends where there is a change of ownership by transmission of interest (*a*), as, for example, the costs of an application for payment of dividends to the person next entitled, on the death of a tenant for life (*b*).

The undertakers do not pay the costs of such an application if the change of ownership is a result of the act of the parties, as, for example, the execution of a deed of settlement (*c*).

As a general rule the undertakers pay costs where new orders as to the payment of dividends are made necessary by a change of circumstances not under the control of the petitioners (*d*). [893]

Costs of Orders for Payment Out.—Costs payable by undertakers when money is paid out to the person or persons absolutely entitled (*e*) include the costs of investigating and establishing the claimant's title, other than costs of adverse litigation (*f*), the costs of appearance of all necessary parties (*g*) and of obtaining letters of administration to the estate of a deceased beneficiary (*h*).

The ascertainment of the rights and shares of the parties is not adverse litigation, if it is necessary for the purpose of distribution, and the costs of such ascertainment are payable by the undertakers (*i*), including the costs of construing a will or other document (*k*). If adverse claimants agree to apply for payment out, the undertakers bear the cost (*l*).

The owners of the fund in court are entitled to deal with it in the ordinary course of dealing with property, and additional costs thereby incurred are payable by the undertakers, as, for example, additional costs of a petition incurred by the institution of an administration

(*t*) *Ex parte Copley* (1858), 4 Jur. (N. S.) 297; 11 Digest 260, 1741.

(*u*) *Re St. Bartholomew's Hospital Trustees* (1859), 4 Drew. 425; 11 Digest 259, 1719.

(*a*) *Re Lye's Estate, Re Berks and Hants Extension Rail. Act*, 1859 (1866), 13 L. T. 664; 11 Digest 268, 1903.

(*b*) *Re Jolliffe's Estate* (1870), L. R. 9 Eq. 668; 11 Digest 250, 1537.

(*c*) *Re Pick's Settlement* (1862), 31 L. J. (Ch.) 495; 11 Digest 268, 1904.

(*d*) *Re Shakespeare Walk School* (1879), 12 Ch. D. 178; 11 Digest 268, 1907.

(*e*) Transfer to another fund is equivalent to payment out: *Prescott v. Wood* (1868), 37 L. J. (Ch.) 691; 11 Digest 267, 1878 (payment to credit of pending cause); *Re Bristol Free Grammar School Estates* (1878), 47 L. J. (Ch.) 317; 11 Digest 266, 1861 (payment to Official Trustee of Charitable Funds). As to when a reinvestment may be deemed to be a payment out, see *ante*, pp. 400, 401.

(*f*) As to costs of adverse litigation, see *ante*, pp. 397, 398.

(*g*) *Re Long's Trust* (1864), 33 L. J. (Ch.) 620; 11 Digest 267, 1876.

(*h*) *Re Lloyd and North London Rail. (City Branch) Act*, 1861 [1896] 2 Ch. 397; 11 Digest 266, 1854.

(*i*) *Re Singleton's Estate, Ex parte Fleetwood Rail. Co.* (1863), 8 L. T. 630; 11 Digest 272, 1990 (numerous parties entitled); *Re Bareham* (1881), 17 Ch. D. 329; 11 Digest 272, 1993 (rights of mortgagee in possession).

(*k*) *Re Gregson's Trusts* (1864), 33 L. J. (Ch.) 531; 11 Digest 271, 1977; *Re Catling's Estate* (1890), 6 T. L. R. 417; 11 Digest 271, 1975 (one set of costs only allowed).

(*l*) *Re Spooner's Estate* (1854), 1 K. & J. 220; 11 Digest 234, 1243.

suit (*m*), or by mortgage of an interest in the fund (*n*), or by exercise of a power of appointment (*o*).

The additional costs incurred by payment out by instalments, if that course is appropriate, are payable by the undertakers (*p*). [894]

Compensation by Way of Annuity.—The compensation payable under the Lands Clauses Acts on a purchase of land may be in the form of an annual rentcharge (*q*). Originally this provision authorised persons absolutely entitled to accept a rentcharge, but was extended to persons under disability or incapacity by the amending Act of 1860 (*r*). The amount of the rentcharge payable to any such person is to be determined by two surveyors under sect. 9 of the Act of 1845 (*s*), and in case of a disagreement, a third surveyor is to be appointed by two justices. The amount of the rentcharge must not, however, be less than 25 per cent. greater than the net average annual rent received by the parties during the preceding seven years, and a charge of 5 per cent. on the gross sum estimated or paid by way of compensation for any damage which may be done to the land is to be added to the rentcharge (*t*).

The rentcharge is charged on the tolls or rates, if any, payable under the special Act, and may be otherwise secured in such manner as may be agreed by the parties (*u*). If not paid within thirty days after demand in writing, the rentcharge may be recovered by action in the superior courts, or by distress (*a*). [895]

(*m*) *Eden v. Thompson* (1864), 10 L. T. 522; 11 Digest 267, 1887.

(*n*) *Re Olive's Estate* (1890), 44 Ch. D. 316; 35 Digest 689, 4322.

(*o*) *Re Brooshoof's Settlement* (1889), 42 Ch. D. 250; 11 Digest 272, 1999.

(*p*) *Re Long's Estate* (1853), 1 W. R. 226; 11 Digest 268, 1893; *Re Edmunds* (1866), 35 L. J. (Ch.) 538; 11 Digest 268, 1894.

(*q*) Lands Clauses Consolidation Act, 1845, s. 10; 2 Statutes 1117.

(*r*) S. 2; 2 Statutes 1166.

(*s*) Act of 1860, s. 4; 2 Statutes 1166.

(*t*) *Ibid.*

(*u*) Lands Clauses Consolidation Act, 1845, s. 11; 2 Statutes 1118.

(*a*) *Ibid.*

COMPOUNDING FOR RATES

See RATING OF OWNERS.

COMPTROLLER

See FINANCIAL OFFICER.

COMPULSORY PURCHASE OF LAND

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See also titles :

ACQUISITION OF LAND (OTHER THAN
COMPULSORY);
COMPENSATION FOR TOWN PLANNING;
COMPENSATION ON ACQUISITION OF
LAND;

FORESTRY;
NOTICE TO TREAT;
RESTRICTIVE COVENANTS.

Preliminary Note.—The law with regard to the compulsory acquisition of land by local authorities is unnecessarily complicated by reason of the existence of several different methods of procedure to be followed by local authorities and promoters of undertakings authorised by statutory enactment.

Power to acquire land compulsorily may be conferred by public general Acts, by provisional orders made by Government departments

and confirmed by Parliament, by departmental orders made under statutory authority and not requiring confirmation by Parliament, by compulsory purchase orders made by county councils (for parish councils) and by local or private Acts (*aa*). [896]

I. THE LANDS CLAUSES ACTS

The ground work of the existing law with regard to compulsory purchase is to be found in the Lands Clauses Acts (*a*). Their object is stated in the preamble to the Act of 1845, which recites that it had been found "expedient to comprise in one general Act sundry provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves" (*b*).

It will be convenient often to refer to the Lands Clauses Consolidation Act, 1845, as "the Act of 1845." In that Act, an Act with which the Lands Clauses Acts are incorporated, is termed the "special Act" (*c*). [897]

If it is intended that the whole of the Lands Clauses Acts shall be incorporated with and form part of a special Act, it is not necessary to make special provision for that purpose, as the Act of 1845 itself provides that that Act shall apply to every undertaking or work of a public nature authorised by any Act passed after May 8, 1845, which shall authorise the purchase and taking of lands for such undertaking, and that that Act shall be incorporated with such Act (*d*).

If, however, it is desired that some portion only of the Lands Clauses Acts shall be incorporated with the special Act, the appropriate procedure prescribed for effecting such partial incorporation is that it should be specifically enacted that the portions of the Act intended to apply shall be incorporated, describing the matter to be incorporated in the words introductory to the enactment with respect to such matter, and expressly varying or excepting any sections or provisions which it is desired to vary or except (*e*). [898]

(*aa*) And see Public Works Facilities Act, 1930; 23 Statutes 769.

(*a*) The Lands Clauses Consolidation Acts, 1845; 2 Statutes 1113; the Lands Clauses Consolidation Acts Amendment Act, 1860; 2 Statutes 1166; the Lands Clauses Consolidation Act, 1869; 2 Statutes 1168; the Lands Clauses (Umpire) Act, 1883; 2 Statutes 1168; the Lands Clauses (Taxation of Costs) Act, 1895; 2 Statutes 1169. In all Acts passed after August 30, 1889, the expression "Lands Clauses Acts" means not only the above-mentioned Acts of 1845, 1860, 1869 and 1883, but any Acts for the time being in force amending the same; the Act of 1895 therefore comes also within the expression (Interpretation Act, 1889, s. 23).

The Acquisition of Land (Assessment of Compensation) Act, 1919; 2 Statutes 1176, provides for the assessment of compensation in certain cases, for the appointment and functions of the assessing tribunal, and other important provisions which by implication amend several of the provisions of the Lands Clauses Acts, and supplement those provisions. It does not, however, specifically repeal or amend the Acts and is not, therefore, one of "the Lands Clauses Acts," though in its title, and in one subsequent Act of Parliament it is referred to as an amending Act (Agricultural Land (Utilisation) Act, 1931, s. 3; 24 Statutes 52).

(*b*) The Statute Law Revision Act, 1891, authorises the omission of this preamble from revised editions of the Statutes.

(*c*) Act of 1845, s. 2; 2 Statutes 1113.

(*d*) *Ibid.*, preamble and s. 1; *ibid.*; Central Control Board (*Liquor Traffic*) v. Cannon Brewery Co., Ltd., [1919] A. C. 744; 11 Digest 548, 512.

(*e*) *Ibid.*, s. 5; *ibid.*, 1115.

"The words introductory to the enactment" referred to in sect. 5 are the headings to the sixteen groups of sections into which the Act of 1845 is divided. These headings may be referred to in order to determine the sense of any doubtful expression in any section included in the group (f), but caution must be used in doing so (g).

The Lands Clauses Acts apply only to special Acts of a public nature (h), authorising the acquisition of land (i), which have been passed since May 8, 1845 (k). They may, however, apply to the acquisition of land authorised by an earlier Act, where a subsequent special Act, passed after May 8, 1845, has the effect of introducing into itself the provisions of such earlier Act (l), or if an Act authorising an undertaking, passed before 1845, is varied by an Act, passed after that date, which authorises the taking of other lands for the undertaking (m). [899]

II. THE ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919

This Act (n) amends the law with regard to "the assessment of compensation in respect of land acquired compulsorily for public purposes and the costs in proceedings thereon." This Act will be referred to as "the Act of 1919," as its short title is inconveniently long.

The Act of 1919 effects substantial changes in the method of assessing compensation prescribed by the Lands Clauses Acts, and its provisions are to be applied in the settlement of all questions of disputed compensation, where land is authorised to be acquired compulsorily by any Government department or any public or local authority, under any statute, whether passed before or after the passing of the Act (August 19, 1919). The Act also provides for the determination of the apportionment of rent in cases where part of the land to be acquired is subject to a lease which comprises land not acquired (o).

The provisions of the Act or order by which the land is authorised to be acquired for public purposes, which is known as "the special Act," or of any Act incorporated therewith, are to have effect subject to the Act of 1919, and so far they are inconsistent therewith, the provisions of the special Act are to cease to have or shall not have effect (q), but the general language of this provision does not, in the

(f) *Hammersmith and City Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; 42 Digest 655, 638, and cf. *Inglis v. Robertson*, [1898] A. C. 616, per Lord HERSCHELL, at p. 620; 42 Digest 606, 63.

(g) See *Hammersmith and City Rail. Co. v. Brand*, *supra*, per Lord CAIRNS, at pp. 216, 217.

(h) *Re Sion College, Ex parte London Corp'n.* (1887), 57 L. T. 743, C. A.; 11 Digest 105, 24.

(i) *Wale v. Westminster Palace Hotel Co.* (1860), 8 C. B. (N. S.) 276; 11 Digest 105, 23.

(k) The date of the Royal Assent to the Act of 1845.

(l) *Re Wood's Estate, Ex parte Works and Buildings Commissioners* (1886), 31 Ch. D. 607, C. A.; 11 Digest 254, 1596.

(m) *Lancashire and Yorkshire Rail. Co. v. Evans* (1851), 15 Beav. 322; 11 Digest 105, 21.

(n) 2 Statutes 1176. The provisions of this Act, so far as they relate to matters other than procedure, are dealt with in the title COMPENSATION ON ACQUISITION OF LAND.

(o) Act of 1919, s. 1; 2 Statutes 1176.

(q) *Ibid.*, s. 7 (1); *ibid.*, 1181.

absence of clear words, affect the special provisions of a local Act passed before 1919 (*r*), nor can it restrain the operation of provisions in a later Act which are inconsistent with or repeal by implication the provisions of the Act of 1919 (*s*).

The Act of 1919 does not apply to the purchase of an undertaking established either by Act of Parliament or by an order having the force of an Act, or to the purchase of any part of such an undertaking, if the purchase is effected under any statutory provisions (including provisions having the force of an Act) which prescribe the terms on which such purchase is to be effected (*t*). [900]

The authorities to which the provisions of the Act are applied are Government departments and local and public authorities, and the expression "public authority" means any body of persons, not trading for profit, authorised by or under any Act to carry on a railway, canal, dock, water or other public undertaking (*u*).

The provisions, therefore, apply to the compulsory acquisition of land by Government departments and local authorities, whether the undertaking for which the land is acquired is intended to be carried on for profit or not. They also apply to any body of persons, such as the Metropolitan Water Board, who are authorised to carry on a public undertaking which does not trade with the object of making profit for themselves or of distributing profit as a dividend (*a*), but they do not apply to a body such as an ordinary railway company carried on for private gain. [901]

Drainage boards and catchment boards established under the Land Drainage Act, 1930, are public authorities within the meaning of the Act (*b*). [902]

The operation of the Act in relation to compensation is limited to the assessment of compensation on the acquisition of "land" which is defined as including water and any interests in land or water and any easement or right in, to, or over land or water (*c*). The definition is inclusive, and operates to extend that contained in the Interpretation Act, 1889, which enacts that in the absence of any special definition, and unless a contrary intention appears, the expression "land" in all Acts passed after the year 1850, includes messuages, tenements and hereditaments, houses, and buildings of any tenure (*d*).

This composite definition of "land," which is larger than the definition of "lands" contained in sect. 3 of the Act of 1845, has the effect of extending the provisions of the Act of 1919 to cases where the special Act authorises the compulsory taking of any interests or easements in, to or over land or water, and where, as in the Waterworks Clauses Act, 1847, the taking and using of streams of water is made equivalent to the taking of land (*e*).

(*r*) *Blackpool Corpn. v. Starr Estate Co., Ltd.*, [1922] 1 A. C. 27; Digest (Supp.).

(*s*) *Vaughall Estates, Ltd. v. Liverpool Corpn.*, [1932] 1 K. B. 733; Digest (Supp.). S. 7 (1) of the Act of 1919, on its true construction, applies only to Acts which existed at the time when that Act was passed and not to future Acts, *per* AVORY, J., at p. 743; *Ellen Street Estates, Ltd. v. Minister of Health*, [1934] 1 K. B. 590.

(*t*) Act of 1919, s. 10; 2 Statutes 1183.

(*u*) *Ibid.*, s. 12 (2); *ibid.*

(*a*) *Metropolitan Water Board v. Berton*, [1921] 1 Ch. 299; 11 Digest 298, 2298.

(*b*) Land Drainage Act, 1930, s. 45 (2), (5); 23 Statutes 562.

(*c*) See s. 12 (2) of the Act of 1919; 2 Statutes 1183.

(*d*) Interpretation Act, 1889, s. 3; 18 Statutes 993. The definition in this Act does not apply to any Act incorporating, without modification, s. 3 of the Act of 1845; 2 Statutes 1113, see *post*, p. 418, "Lands which may be Taken."

(*e*) Waterworks Clauses Act, 1847, s. 2; 20 Statutes 186.

The definition does not, of course, extend the scope of the Lands Clauses Acts, or, of itself, enlarge the power of taking lands, or interests in lands, conferred by the special Act, and unless power to take compulsorily any interests in land other than those comprised in the definition in sect. 3 of the Lands Clauses Act, 1845, is conferred by the special Act, the power is limited to the taking of lands and interests comprised in that definition. [903]

III. MODIFICATIONS OF THE ACT OF 1919 BY LATER ENACTMENTS

The provisions of the Act of 1919 have been specifically applied, excluded or modified by the following later enactments :

Housing.—Compensation for land comprised in a clearance area which is acquired compulsorily is to be assessed in accordance with the Act of 1919, but subject to considerable modifications (*f*).

Where rights of way or easements over land comprised in a clearance or improvement area become vested in a local authority by reason of the purchase of the land, compensation for the loss occasioned thereby is to be determined in accordance with the Act of 1919 (*g*).

If a local authority purchase compulsorily a dwelling-house unfit for human habitation, the compensation to be assessed in accordance with the Act of 1919 is to be the value of the site alone (*h*). [904]

Land Drainage.—Where a drainage board are authorised by order to acquire lands compulsorily, the board are a public authority and the Act of 1919 accordingly is applied (*i*). [905]

Landlord and Tenant.—The provisions as to costs of sub-sects. (1), (2) and (3) of sect. 5 of the Act may be adapted and applied to costs of proceedings in the county court under sect. 21 of the Landlord and Tenant Act, 1927 (*k*). [906]

Public Works Facilities.—The Act of 1919 is to be incorporated expressly in compulsory purchase orders made by local or public authorities under the Public Works Facilities Act, 1930, subject to the modifications therein mentioned (*l*). [907]

Restrictive Covenants, etc.—One or more of the official arbitrators, as may be selected by the Reference Committee under the Act of 1919, form the authority empowered (without prejudice to the concurrent jurisdiction of the courts) by order to discharge or modify restrictions arising under covenant or otherwise as to user of or building on land, either subject to compensation or not so subject (*m*). [908]

(*f*) Housing Act, 1925, s. 46; 13 Statutes 1028; Housing Act, 1930, s. 12, Sched. III., Part I.; 23 Statutes 405, 440.

(*g*) Housing Act, 1930, s. 13 (2); *ibid.*, 406.

(*h*) *Ibid.*, s. 23 (3); *ibid.*, 415.

(*i*) Land Drainage Act, 1930, s. 45 (2), (5), Sched. IV.; 23 Statutes 562, 591.

(*k*) 17 & 18 Geo. 5, c. 36; 10 Statutes 392.

(*l*) 20 & 21 Geo. 5, c. 50, s. 2, Sched. I., Part II.; 23 Statutes 773, 777, a temporary Act, of which the provisions here mentioned are continued in force till December 31, 1934, by the Expiring Laws Continuance Act, 1933; 26 Statutes 739.

(*m*) Law of Property Act, 1925, s. 84; 15 Statutes 260; Administration of Justice Act, 1932, s. 6; 25 Statutes 542; Law of Property (Restrictive Covenants Discharge and Modification) Rules, 1933, S.R. & O., 1933, No. 51/L.1.

Small Holdings and Allotments.—It is declared by the Small Holdings and Allotments Act, 1926 (*n*), that the Act of 1919 does not apply to the determination of compensation payable on the withdrawal of a notice to treat given under the Small Holdings and Allotments Act, 1908 (*o*), nor affect the power of the Minister of Agriculture and Fisheries under that Act to give directions as to the hearing of counsel or expert witnesses and fixing scales of costs (*p*). [909]

Streets.—Where a local authority having adopted sect. 31 of the P.H.A., 1925 (*q*), empowering them to require a new street to be made of a width exceeding by more than twenty feet the maximum width prescribed for a new street by bye-law or enactment, compensation for loss sustained by such requirement is to be assessed in accordance with the Act of 1919, but the benefits accruing by reason of the widening are to be set off against compensation (*r*).

The provisions of the Act of 1919 are extended so as to apply to the assessment of compensation payable for injurious affection of property by reason of the fixing of an improvement line in a street under the powers of the P.H.A., 1925, by a county council or by a local authority where the latter has adopted the relevant section of that Act (*s*). [910]

Toll Bridges and Toll Roads.—On a compulsory transfer of a toll bridge or toll road to the council of a county, borough or urban district, after notice to treat is given by them, the consideration for the transfer is to be determined, in default of agreement, by an official arbitrator in accordance with the provisions of the Act of 1919 (*t*). [911]

Town and Country Planning.—Failing agreement, the Act of 1919 is to apply, subject to modifications and adaptations, to any question arising under the Town and Country Planning Act, 1932, as to the right of a claimant to recover compensation, or the right of an authority to recover any amount for increase in value of any property, and the amount and the manner of payment of any such recoverable compensation or amount (*u*).

Where an owner becomes empowered to compel a planning authority to purchase land which is the subject of an interim development order, the price of the land is to be settled, in the absence of agreement, in accordance with the provisions of the Act of 1919 (*x*). That Act must also be expressly incorporated in all compulsory purchase orders made under the Town and Country Planning Act, 1932, subject to the modifications therein mentioned, and any necessary adaptations (*a*). [912]

(*n*) 16 & 17 Geo. 5, c. 52, s. 17 (3); 1 Statutes 332.

(*o*) S. 39 (8); 1 Statutes 267.

(*p*) Sched. I, Part I. (5), (6); 1 Statutes 280.

(*q*) 13 Statutes 1126.

(*r*) P.H.A., 1925, s. 31 (2); 13 Statutes 1127.

(*s*) *Ibid.*, s. 33 (6).

(*t*) Road Traffic Act, 1930, s. 53 (3); 23 Statutes 649. The parties are not empowered to refer the matter to the Commissioners of Inland Revenue.

(*u*) Town and Country Planning Act, 1932, s. 23; 25 Statutes 501. The Act of 1919 applies also to questions of compensation and betterment arising under the Town Planning Act, 1925, s. 10; 13 Statutes 1084; Town Planning (Determination of Questions as to Compensation) Rules, 1926, S.R. & O., 1926, No. 439/L.9. The Act of 1925 is repealed by the Town and Country Planning Act, 1932, s. 54; 25 Statutes 522, except in relation to outstanding claims or claims made within the time limited by or under the repealed Act.

(*x*) Act of 1932, s. 10; 25 Statutes 482.

(*a*) *Ibid.*, s. 25 and Sched. III.; *ibid.*, 502, 529.

Unemployment Relief Works.—Where entry is made on lands required by a local authority for works of public utility to be undertaken for the speedy relief of unemployment, compensation for the land and interest thereon, from the date of such entry, is to be ascertained in accordance with the Act of 1919 (*b*).

The Act is also expressly applied by some statutes giving powers of compulsory acquisition to Government departments (*c*).

IV. QUESTIONS TO BE SETTLED UNDER THE ACT OF 1919

The questions of disputed compensation or apportionment of rent which must be determined under the Act of 1919 are as follows :

- (i.) The value of the land taken or of the interest of the claimant therein. [913]
- (ii.) Compensation for severance, disturbance, loss of goodwill or other injurious affection in respect of land taken. [914]
- (iii.) Any claim that a question shall be submitted to arbitration where compensation payable to an absent party has been determined by a surveyor and that party is dissatisfied with the valuation (*d*). [915]
- (iv.) Where part of the land to be acquired is subject to a lease which comprises land not required, any question as to the apportionment of the rent payable under the lease. [916]
- (v.) Compensation for loss and expenses occasioned by the service of a notice to treat which has been withdrawn. [917]

The extent to which the Act of 1919 applies is not clearly defined in sect. 1 of the Act. The marginal note to that section refers to "compensation in respect of land compulsorily acquired" and the title to the Act also refers to "land acquired compulsorily." It may be inferred that a claim for severance, as being a claim in respect of the land acquired, is one to which the Act applies. A claim for injury caused by the disturbance of a business likewise comes within its purview, being specifically mentioned in sect. 3 (1). It is doubtful, however, if claims for injurious affection, whether other lands of the owner are taken or not, should be dealt with under the Act. The question was raised in *Hewitt v. Essex County Council* (*e*), but the claim was there dealt with by the official arbitrator under an agreement made by the parties (*f*).

In order to save expense and inconvenience it is desirable that the parties should agree to the submission to the official arbitrator of any claim or part of a claim where a doubt arises as to the applicability of the provisions of the Act. [918]

(*b*) Unemployment (Relief Works) Act, 1920, s. 2 (5); 20 Statutes 654. As to the meaning of "work of public utility," see s. 5 (1).

(*c*) See Air Navigation Act, 1920, s. 7 (3); 19 Statutes 195; Agricultural Land (Utilisation) Act, 1931, s. 3; 24 Statutes 52. The Central Electricity Board is a public authority for the purposes of the Act. Electricity Supply Act, 1926, s. 21; 7 Statutes 807.

(*d*) Act of 1845, s. 64; 2 Statutes 1133.

(*e*) (1927), 44 T. L. R. 111; Digest (Supp.).

(*f*) In *Wright v. Air Council (President)*, (1929), 143 L. T. 43, a claim for injurious affection was dealt with without agreement of the parties. The question was raised in *Thurrock Grays and Tilbury Joint Sewerage Board and Thames Land Co., Ltd.* (1925), 90 J. P. 1, and not decided, because the claim arose out of the laying in land of a sewer, and this was held to be a taking of the land.

V. METHODS OF CONFERRING COMPULSORY POWERS

By Public General Act.—It is not usual by a public general Act to give local authorities or promoters of public utility undertakings power to acquire land compulsorily without first obtaining an order, provisional or otherwise, to be made or confirmed by a Government department, to authorise a particular purchase. An exception to the general rule is, however, to be found in sects. 33, 34 of the P.H.A., 1925 (*gg*), which authorise a local authority after prescribing an improvement line for a street to acquire compulsorily, without a compulsory purchase order, land not occupied by buildings lying between the improvement line and the boundary of the street (*g*). Several public general Acts allow Government departments to acquire compulsorily specified sites for Government buildings, but the Bills for these Acts will have been introduced as hybrid Bills and will have been examined, like a Bill for a local Act, by private Bill Committees, persons injuriously affected being given the right of being heard against the Bill by a Committee of either House of Parliament. In general, a roving power of purchasing land compulsorily is not given by a public general Act to a Government department although some exceptions to this rule may be found (*h*), and somewhat akin is the power conferred upon the Commissioners of Customs, to require not only the use of land, but also the erection of a watch house and other buildings thereon, on or near to any harbour, dock or pier to which the Harbours, Docks and Piers Clauses Act, 1847 (*i*), applies, if rates are intended to be taken there. [919]

By Local Act.—If a local authority or promoters of a public utility undertaking desire to take lands compulsorily for the purpose of an undertaking, and no public general Act allows a compulsory purchase order to be obtained for the acquisition of the necessary land, or special circumstances render this procedure undesirable, a Bill in Parliament for a local Act must be promoted in order to obtain the necessary power. In connection with the Bill it is necessary to prepare and deposit plans, accompanied by a book of reference, showing the land proposed to be acquired, and the names of the owners, lessees and occupiers thereof (*k*). [920]

By Subordinate Legislation.—Many Acts of Parliament allow Ministers of the Crown or other Government departments to confer a power to acquire land compulsorily on local authorities and other statutory undertakers. There is a great lack of uniformity in the procedure laid down in the various statutes, but, in general, the necessary authority is to be given either by a provisional order which

(*gg*) A much earlier exception, in operation in London, is that under the Metropolitan Paving Act, 1817; 11 Statutes 838, commonly known as "Michael Angelo Taylor's Act."

(*g*) P.H.A., 1925, s. 33; 13 Statutes 1128. This power may be exercised by county councils without the necessity of adoption (s. 34 and s. 2 (2) proviso); by borough and urban district councils in respect of unclassified roads and roads claimed by them (L.G.A., 1929, ss. 31, 32; 10 Statutes 905, 906); and by borough and district councils to whom the powers of a county council with regard to road improvements have been delegated by the county council (*ibid.*, s. 35; *ibid.*, 910). See title BUILDING AND IMPROVEMENT LINES.

(*h*) See, for example, Admiralty (Signal Stations) Act, 1815; 17 Statutes 557; Customs Consolidation Act, 1853, s. 337; 16 Statutes 172.

(*i*) S. 14; 18 Statutes 53.

(*k*) See the title BILLS, PARLIAMENTARY AND PRIVATE, at p. 72 of Vol. II.

requires confirmation by Act of Parliament before it comes into force (*l*) or by a compulsory purchase order not requiring such confirmation (*m*).

In some cases a compulsory purchase order must be made by a local authority and confirmed or approved by the Government department. In other cases the order is made by the Government department. [921]

The L.G.A., 1933.—This Act to a large extent standardises the procedure with regard to orders authorising the compulsory purchase of land by local authorities and further provides two codes: (i.) applying to the making of provisional orders to be confirmed by Parliament, and (ii.) applying to compulsory purchase orders to be made by a local authority and confirmed by the M. of H. (*n*). The Act of 1933 does not, however, affect the procedure prescribed by the enactments referred to in the Seventh Schedule to the Act (*o*). The second code applies only where it is applied by a future public general Act, but the first code is of wider extent and applies not only where it is applied by a future Act or statutory order, but also where a power of compulsory purchase is given by the Act of 1933, or by an enactment or statutory order in force on May 31, 1934, incorporating or applying sect. 176 of the P.H.A., 1875 (*p*), which is repealed by the Act of 1933. [922]

Sect. 162 of the L.G.A., 1933 (*q*), provides new machinery for the purpose of testing the validity of a compulsory purchase order made under sect. 161 of that Act, *i.e.* an order made by a local authority and confirmed by the M. of H. Any person aggrieved by the order, who desires to question its validity, may apply to the High Court within two months after the publication of notice that the order has been confirmed by the Minister, and the court may quash the order either generally, or in so far as it affects any property of the applicant, if they are satisfied that the order is invalid, and where the invalidity arises from a failure to comply with the procedure for the making or confirmation of the order, if the court are further satisfied that the interests of the applicant have been substantially prejudiced by that failure. No appeal to the House of Lords lies from a decision of the Court of Appeal under the section, except by leave of the Court of Appeal.

But where a compulsory purchase order under Part VII. of the L.G.A., 1933, authorises the acquisition of any land forming part of a common, open space or allotment, sect. 174 (1) of that Act (*r*) provides that the order must be a provisional order and subject to confirmation by Parliament, unless land certified by the M. of H. after consultation with the M. of A. & F. to be equally advantageous to the commoners and to the public is required by the order to be given in exchange.

(*l*) Bills for the confirmation of provisional orders are dealt with under the Standing Orders of both Houses of Parliament as private Bills, though it is usual in Acts authorising the making of provisional orders to provide that the confirming Act shall be a public general Act.

(*m*) The Education Act, 1921, s. 111; Sched. V.; 7 Statutes 190, 223. The Light Railways Act, 1896, s. 7; 14 Statutes 254, as amended by the Railways Act, 1921, s. 68; 14 Statutes 362, authorises the making both of provisional orders and of compulsory purchase orders.

(*n*) Ss. 160, 161; 26 Statutes 393, 394, and the Local Government (Compulsory Purchase) Regulations, 1934; S.R. & O., 1934, No. 363.

(*o*) A list of these is set out in title ACQUISITION OF LAND in Vol. I., pp. 56, 57.

(*p*) 13 Statutes 700.

(*q*) 26 Statutes 396.

(*r*) *Ibid.*, 401.

Sub-sect. (3) of sect. 174 contains definitions of "allotment," "common" and "open space." The allotments to which the section applies are not allotments provided under the Allotments Acts, 1908 to 1926, but fuel allotments or field gardens allotted under an Inclosure Act. [923]

Purposes for which Compulsory Powers may be Acquired.—The following is a classification of the purposes for which orders may be made for the compulsory acquisition of land by local authorities :

I. Orders not requiring Confirmation or Approval by Parliament.

(A) To be confirmed by a Minister or other Government department :

Aerodromes. See No. 11, *post*.

1. **Allotments**, purchase or hiring of land for ; order to be confirmed by the M. of A. & F. (*s*).

2. **Common pasture**, purchase or hiring of land for ; order to be confirmed by the M. of A. & F. (*t*).

3. **Small holdings**, purchase or hiring of land for ; order to be confirmed by the M. of A. & F. (*u*).

4. **Cottage holdings**, purchase or hiring of land for ; order to be confirmed by the M. of A. & F. (*a*).

5. **Education**.—For the purposes of the Education Act, 1921 ; order to be confirmed by Board of Education, but must be confirmed by Parliament in some cases (*b*).

6. **Housing**.—For the purposes of Part III. (Provision of houses for the working classes) of the Housing Act, 1925 ; order to be confirmed by the M. of H. (*c*).

7. **Housing**.—For the purposes of Part I. (Clearance or improvement of unhealthy areas) ; order to be confirmed by the M. of H. (*d*).

8. **Housing**.—For the purpose of repairing houses ; order to be confirmed by the M. of H. (*e*).

9. **Land drainage**.—For purposes of land drainage and reclamation ; order to be confirmed by M. of A. & F. (*f*).

10. **Public libraries, public museums and art galleries** ; order to be confirmed as for purposes of Education, No. 5, *ante* (*g*).

11. **Public works**.—Purchase of land for any purpose for which a local authority or statutory undertaker could be authorised to acquire compulsorily the land by order having effect under some enactment in force before the commencement of the Public Works Facilities Act,

(*s*) Small Holdings and Allotments Act, 1908, ss. 24, 25, 37 ; 1 Statutes 258, 259, 265 ; Small Holdings and Allotments Act, 1926, s. 4 ; 1 Statutes 324. See also title ALLOTMENTS.

(*t*) Act of 1908, *supra*, ss. 34, 37 ; 1 Statutes 264, 265.

(*u*) Small Holdings and Allotments Act, 1926, s. 4 ; 1 Statutes 324.

(*a*) Agricultural Land (Utilisation) Act, 1931, s. 12 ; 24 Statutes 58.

(*b*) Education Act, 1921, s. 111, Sched. V. (1), (2), (6), (7) ; 7 Statutes 190, 223. See also title EDUCATION.

(*c*) Housing Act, 1925, s. 64 ; 13 Statutes 1039 ; Housing Act, 1930, s. 50, Sched. II. ; 23 Statutes 430, 438.

(*d*) *Ibid.*, s. 10, Sched. II. ; *ibid.*, 404, 438.

(*e*) S. 23, Sched. II. ; *ibid.*, 415, 438.

(*f*) Land Drainage Act, 1930, ss. 44, 76, Sched. IV. ; 23 Statutes 561, 577, 591.

(*g*) Public Libraries Act, 1892, s. 1 ; 13 Statutes 850 ; Public Libraries Act, 1919, ss. 1, 6 ; 13 Statutes 966, 969. See title LIBRARIES.

1930, and for aerodromes under the Air Navigation Act, 1920 (*h*), and for open spaces in metropolitan boroughs, and for the provision of buildings by municipal corpns. for which they were authorised to purchase land by sect. 105 of the Municipal Corpns. Act, 1882 (*i*); orders to be confirmed by the Secretary of State or Minister concerned with the functions of the authority to which the order relates (*k*).

Extensive use has and will no doubt so long as the Act, which is temporary (*kk*), remains in force, be made of this power by local authorities for acquiring lands for all purposes. The Act has the additional advantage that entry may be made upon the land after giving fourteen days' notice.

12. **Public utility, works of.** As for Housing (*l*).

13. **Town and country planning.**—Purchase of land for the purposes of a scheme made by a responsible authority under the Town and Country Planning Act, 1932; order to be confirmed by the M. of H. (*m*).

(B) Orders to be made by a Minister or other Government department:

14. **Parish councils.**—If a county council refuse to make an order for the compulsory purchase of land required by a parish council for the purpose of their functions (see No. 18, *post*), such an order may be made by the M. of H. (*n*).

15. **Allotments and common pasture,** purchase or hiring of land for, if county council refuse to make and submit order on behalf of a parish council or parish meeting; order to be made by M. of A. & F. (*o*).

16. **Farm institutes,** extension of provision of small holdings, construction and improvement of harbours, construction of new roads and improvement of existing roads, etc.; order to be made by the Development Commissioners (*p*).

17. **Light railways;** order to be made by the M. of T. (*q*).

(C) Orders made by county council:

18. **Parish councils.**—Land for the purpose of any of their functions other than those exercisable under the Acts named in the Seventh Schedule to the L.G.A., 1933, if it cannot be acquired by agreement on reasonable terms; to be confirmed by M. of H. (*r*).

19. **Parish councils and parish meetings.**—Land for allotments and common pasture; order to be confirmed by M. of A. & F. (*s*).

(*h*) S. 8; 19 Statutes 196.

(*i*) Public Works Facilities Act, 1930, s. 2 (1), Sched. I.; 23 Statutes 773, 777. S. 105 of the Municipal Corpns. Act, 1882, is in part repealed by the L.G.A., 1933, see now s. 125 of the latter Act; 26 Statutes 372.

(*k*) Public Works Facilities Act, 1930, Sched. I., Part II. (4), s. 6; 23 Statutes 778, 775.

(*kk*) See note (*l*) on p. 408, *ante*.

(*l*) Unemployment (Relief Works) Act, 1920; 20 Statutes 652; Expiring Laws Continuance Act, 1933; 26 Statutes 739.

(*m*) S. 25, Sched. III.; 25 Statutes 502, 529. See title TOWN AND COUNTRY PLANNING.

(*n*) L.G.A., 1933, s. 168 (7); 26 Statutes 399.

(*o*) Small Holdings and Allotments Act, 1908, ss. 39 (7), 61 (4); 1 Statutes 267, 279.

(*p*) Development and Road Improvement Funds Act, 1909, ss. 1, 5 (1), 8 (1), 11 (5); 9 Statutes 208, 211, 212, 214. See title ROAD IMPROVEMENT.

(*q*) Light Railways Act, 1896, s. 7 (4); 14 Statutes 255; Light Railways Act, 1912; 14 Statutes 314; Railways Act, 1921, s. 68 (1); 14 Statutes 362. See title LIGHT RAILWAYS.

(*r*) L.G.A., 1933, s. 168; 26 Statutes 398.

(*s*) Small Holdings and Allotments Act, 1908, ss. 39 (7), 61 (4); 1 Statutes 267, 279.

All the purposes above mentioned, in which a power of compulsory purchase of particular land may be obtained without the intervention of Parliament in the confirmation of the order, are examples of cases in which Parliament, at some time or other, considered that delay in carrying out the scheme for which the land was required would be specially prejudicial to public interests. [924]

II. *Provisional Orders, requiring Confirmation by Parliament.*

20. **County council** purposes generally. For the purposes of any of the functions of a county council under the L.G.A., 1933, or any other public general Act, including any such functions as are exercised by the standing joint committee (*t*), but excluding (i.) any purpose for which the council's power is expressly limited to acquisition by agreement (*u*), and (ii.) the purposes of the enactments set out in the Seventh Schedule to the Act of 1933 (*w*); order to be made by the M. of H. (*x*).

21. **Public health.**—For any of the purposes of the P.H. Acts, 1875 to 1932 (*y*); order to be made by the M. of H. (*z*).

22. **Baths and washhouses and open bathing places.**—As for the purposes of the P.H. Acts (*a*).

23. **Cemeteries.**—As for the purposes of the P.H.A., 1875 (*b*), but not for the provision of a burial ground under the Burial Acts, 1852 to 1906.

24. **Children and young persons.**—For those purposes of the Children and Young Persons Act, 1933, which relate to children, or to persons other than children; order to be made by the M. of H. (*c*).

25. **Diseases of animals.**—For wharves for the reception of animals, and the burial of carcases of animals and for other purposes of the Diseases of Animals Act, 1894; order to be made by the M. of H. (*d*).

26. **Education.**—For education purposes; order to be submitted by the local education authority and confirmed by the Board of Education (*e*), but the order must in some cases be submitted to Parliament for confirmation.

27. For purposes of the Development and Road Improvement Funds Act, 1909 (see No. 16, *supra*), where the land forms part of a common, open space or allotment as therein defined subject to certain exceptions (*f*).

28. **Housing.**—For the purposes of Part III. of the Housing Act, 1925, where land forms part of a common, open space or allotment (*g*).

(*t*) L.G.A., 1933, s. 159; 26 Statutes 392.

(*u*) *Ibid.*, s. 179 (*f*); 26 Statutes 403. For an example where powers to acquire compulsorily are not given, but no express limitation is imposed, see Inebriates Act, 1898; 9 Statutes 955; Children and Young Persons Act, 1933, s. 77; 26 Statutes 216.

(*w*) L.G.A., 1933, ss. 159 (1), 179 (*g*). For list of these Acts, see title ACQUISITION OF LAND in Vol. I.

(*x*) *Ibid.*, s. 160 (5); 26 Statutes 393.

(*y*) *Ibid.*, s. 159 (2).

(*z*) *Ibid.*, s. 160 (5).

(*a*) See title BATHS AND WASHHOUSES, at p. 16 of Vol. II.

(*b*) P.H. (Interments) Act, 1879; 13 Statutes 796.

(*c*) S. 96 (1), (5) (*b*); 26 Statutes 232, 233. Para. (*a*) is repealed by L.G.A., 1933.

(*d*) S. 33; 1 Statutes 407. In part repealed by L.G.A., 1933.

(*e*) Education Act, 1921, s. 111, Sched. V. (6), (7), (8); 7 Statutes 190, 223.

(*f*) S. 19; 9 Statutes 216.

(*g*) Housing Act, 1925, s. 103; 13 Statutes 1059.

29. **Infectious disease.**—For hospitals for infectious disease provided by isolation hospital committee; order to be made by M. of H. (*h*).

30. **Light railways.**—For light railways; order to be made by the M. of T. (*i*).

31. **Mental deficiency.**—For institutions intended to be certified under the Mental Deficiency Act, 1913; order to be made by the M. of H. (*k*).

32. **Mental treatment.**—For mental hospitals for rate-aided patients and voluntary patients, and for institutions for the purposes of the Mental Treatment Act, 1930; order to be made by the M. of H. (*l*).

33. **Military purposes.**—For purchase and holding of lands on behalf of a territorial force county association, for military purposes; order to be made by a Secretary of State (*m*).

34. **Naval purposes.**—For the purchase and holding of lands on behalf of a division or company of the Royal Naval Volunteer Reserve, for naval purposes; order to be made by the Admiralty (*n*).

35. **Poor law.**—For purposes of public assistance; order of M. of H. (*o*).

36. **Public libraries, public museums, and art galleries, for purposes of;** order to be submitted by the library authority and confirmed as for education purposes, No. 26, *ante* (*p*). [925]

III. *Special Orders Approved by Parliament.*

37. **Electricity.**—For the purposes of the Electric Lighting Acts a Special Order may be made by the Electricity Commissioners and confirmed by the M. of T. and approved by resolution of each House of Parliament (*q*).

IV. *Authorities by whom above Powers may be Exercised.*

Compulsory powers of purchase for these purposes may be acquired by local authorities as follows:

Parish meetings.

Allotments. Nos. 14, 18.

Common pasture. Nos. 14, 18.

A parish meeting may also exercise the powers of a parish council if powers for those purposes are conferred on them by the county council (*r*).

(*h*) Isolation Hospitals Act, 1893, s. 11; 13 Statutes 865.

(*i*) Railways Act, 1921, s. 68 (2); 14 Statutes 363.

(*k*) S. 38; 11 Statutes 182.

(*l*) Lunacy Act, 1890, s. 238; 11 Statutes 99; and see *ibid.*, note to s. 260 at p. 105; Mental Treatment Act, 1930, ss. 1, 6 (4); 23 Statutes 154, 162.

(*m*) Military Lands Act, 1892, ss. 1 (3), 2; 17 Statutes 575.

(*n*) Naval Lands (Volunteers) Act, 1908, s. 1; 17 Statutes 600.

(*o*) Poor Law Act, 1930, s. 110; 12 Statutes 1028; L.G.A., 1933, s. 160; 26 Statutes 398.

(*p*) Public Libraries Act, 1892, s. 1; 13 Statutes 850; Public Libraries Act, 1919, ss. 1, 6; 13 Statutes 966, 969.

(*q*) Electric Lighting Act, 1909, s. 1; 7 Statutes 744; Electricity (Supply) Act, 1919, ss. 26, 35; 7 Statutes 772, 775. For the purposes of these Acts "land" includes easements. As to the procedure on passing Special Orders, see Royal Commission on Local Government, 1929, Minutes of Evidence, II., Q. 5188—5227.

(*r*) L.G.A., 1933, s. 273; 26 Statutes 451.

Parish councils.—For all purposes for which a parish council may acquire land, unless the power to acquire land is by enactment or statutory order expressly limited to acquisition by agreement (*u*).

Rural district councils.

For housing. Nos. 6, 7, 8, 28.

For town and country planning (if constituted as a responsible authority). No. 13.

For light railways. Nos. 17, 30.

For P.H.A. purposes. No. 21.

For cemeteries. No. 23.

For electric lighting. No. 37.

Urban district councils (including non-county boroughs). For all the purposes for which a R.D.C. can acquire land compulsorily, and for allotments (No. 1) and common pasture (No. 2), and for public libraries, etc. (Nos. 10, 36).

Urban district councils, population of over 20,000 (1901 Census).

For elementary education. Nos. 5, 26.

For those purposes of the Children and Young Persons Act, 1933, which relate to children, other than provision of remand homes. No. 24.

Non-county borough councils, in addition to the powers of an U.D.C. above mentioned.

For military purposes. No. 33.

For naval purposes. No. 34.

Non-county borough councils, population over 10,000 (1901 Census). The same as urban district councils where the population is over 20,000. See *supra*.

Non-county borough councils, population over 10,000 (1881 Census).

For the purposes of the Diseases of Animals Acts. No. 25.

Non-county borough councils, named in Schedule IV. of the Lunacy Act, 1890 (*a*).

For mental treatment. No. 32.

County borough councils.—For all the purposes for which any U.D.C. or non-county borough council may acquire land compulsorily, and

For small holdings. No. 3.

For cottage holdings. No. 4.

For education. Nos. 5, 26.

For those purposes of the Children and Young Persons Act, 1933, which relate to young persons. No. 24.

For the purposes of the Mental Deficiency Acts. No. 37.

For poor law purposes. No. 35.

County councils.

For small holdings. No. 3.

For cottage holdings. No. 4.

For education (elementary and higher). Nos. 5, 26.

For public libraries. Nos. 10, 36.

For light railways. Nos. 17, 30.

For the purpose of other functions of the council. No. 20.

(*u*) L.G.A., 1933, ss. 168, 179 (f); 26 Statutes 395, 404.

(*a*) 11 Statutes 144.

Drainage authorities.

For land drainage. No. 9.

Isolation Hospital committees.

For hospitals for infectious diseases. No. 29.

Reference should also be made to the general powers contained in the Development and Road Improvement Funds Act, 1909 (Nos. 16, 27), the Unemployment (Relief Works) Act, 1920 (No. 12), and the Public Works Facilities Act, 1930 (No. 11). [926]

VI. LANDS WHICH MAY BE TAKEN

The Lands Clauses Consolidation Act, 1845, enacts that the word "lands" shall, both in that Act and the special Act, extend to messuages, lands, tenements and hereditaments of any tenure unless there is something either in the subject or context repugnant to such construction (c). The word "hereditaments" in this definition signifies corporeal hereditaments and does not include an easement, such as a right of way, and promoters carrying out an undertaking under the provisions of the Lands Clauses Acts can be compelled by an owner to acquire his whole interest in land over which a mere right of way would be sufficient for the purposes of the undertaking (d). A compulsory purchase may, however, carry with it a way of necessity for the purposes for which the land is taken, at any rate if the vendor has not insisted upon the soil of such way being purchased (e). [927]

It is the practice in modern Acts of Parliament to insert provisions extending or varying the above-mentioned definition of lands and in many cases authorising the taking of easements. Thus the definition of "lands" in sect. 4 of the P.H.A., 1875 (f), covers easements, and sect. 305 of the L.G.A., 1933, provides that for the purposes of that Act, "land" includes any interest in land, and any easement or right in, to or over land (g). In such cases the provisions of the Lands Clauses Acts apply as though easements had been included in the definition of lands in those Acts (h). The Acquisition of Land (Assessment of Compensation) Act, 1919, extends the meaning of the expression "land," for the purposes of that Act, to include water and any interests in land or water and any easement or right in, to or over land or water (i).

(c) Act of 1845, s. 3 ; 2 Statutes 1113. The definition of "land" in the Interpretation Act, 1889, s. 3 ; 18 Statutes 993, therefore has no application as it only operates in the absence of a special definition.

(d) *Pinchin v. London and Blackwall Rail. Co.* (1854), 5 De G. M. & G. 851 ; 11 Digest 182, 601. Promoters of undertakings simply having the powers of the Lands Clauses Act cannot purchase an easement and an owner cannot grant them a mere easement so as to give them a good title. *Re Barrow-in-Furness Corpn. and Rawlinson's Contract*, [1903] 1 Ch. 339, per KEKEWICH, J., at p. 350 ; 24 Digest 611, 6416.

(e) *Serff v. Acton Local Board* (1886), 31 Ch. D. 679 ; 19 Digest 101, 639.

(f) 13 Statutes 624.

(g) 26 Statutes 465. As to the nature of interests in land which are capable of subsisting at law and in equity respectively, see Law of Property Act, 1925, s. 1 ; 15 Statutes 177.

(h) *Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143, 147 ; 19 Digest 11, 13.

(i) Act of 1919, s. 12 (2) ; 2 Statutes 1183 ; see also *ante*, p. 407.

But although water rights were covered by the definition of "lands" in sect. 4 of the Act of 1875, the Law Officers of the Crown advised many years ago that a provisional order for the compulsory purchase of water rights under sect. 176 of that Act was inadmissible (*k*). This opinion was based on the view that the saving for owners of water rights contained in sect. 332 of the Act of 1875 (*l*) prevented the compulsory expropriation of water rights, especially as the water rights, on a stream or river, of persons other than the owner of the rights purchased, might be seriously affected by the purchase. It is questionable, therefore, whether sect. 159 (2) of the L.G.A., 1933 (*m*), which allows a borough or district council to be authorised to purchase land compulsorily for any of the purposes of the P.H. Acts, 1875 to 1932, will permit of a compulsory acquisition of water rights, notwithstanding that the definition of "land" in sect. 305 of the Act would cover water rights. [928]

As a general rule, but subject to some important exceptions, the lands to be purchased and taken compulsorily must be the lands actually required for the purposes of the undertaking and described in the special Act or in the order authorising the purchase (*n*). On the promotion of a private Bill for an Act of Parliament authorising land to be acquired, it is necessary under the Parliamentary Standing Orders to prepare and deposit a plan showing the lands proposed to be taken, and a book of reference describing such lands and the names of the owners and lessees or reputed owners and lessees and occupiers thereof. It is usual for the Act to give authority to the promoters to enter on, take and use all or any part of the lands delineated on the deposited plans and described in the deposited book of reference, which they may require for the purposes of the Act. [929]

The proportion of the land authorised to be taken, which is actually required for the purposes of the special Act, may be determined by the promoters, and the courts will not interfere with their discretion provided that they act with the *bona fide* intention of using lands to be acquired by them for the authorised purposes and not for any collateral purpose (*o*). The evidence of a qualified servant or officer of the promoters as to the necessity for taking land will be accepted by the court, if his statement has a reasonable appearance of accuracy (*p*), though he may be asked to give the reason why the land is required (*q*). [930]

A promoter will not be restrained from taking land which he is authorised to take, merely on the ground that he might obtain the

(*k*) See Lumley's Public Health, 10th ed., pp. 439, 665.

(*l*) 13 Statutes 762.

(*m*) 26 Statutes 392.

(*n*) Act of 1845, ss. 1, 18; 2 Statutes 1113, 1120. *Eversfield v. Mid-Sussex Rail. Co.* (1858), 28 L. J. (Ch.) 107; 11 Digest 116, 98; *Dodd v. Salisbury and Yeovil Rail. Co.* (1859), 33 L. T. (o. s.) 254, 311; 11 Digest 116, 101. Land cannot be taken for a purpose not authorised by statute; *Batson v. London School Board* (1903), 67 J. P. 457; 19 Digest 573, 120.

(*o*) *Stockton and Darlington Rail. Co. v. Brown* (1860), 9 H. L. Cas. 246; 11 Digest 115, 91; and see *Webb v. Manchester and Leeds Rail. Co.* (1839), 4 My. & Cr. 116; 11 Digest 104, 7.

(*p*) *Kemp v. South Eastern Rail. Co.* (1872), 7 Ch. App. 364; 11 Digest 115, 93.

(*q*) *Flower v. London, Brighton and South Coast Rail. Co.* (1865), 34 L. J. (Ch.) 540; 11 Digest 115, 92.

same object in some other way, without taking the land (*r*), nor from taking land required for the convenient working of the undertaking though not absolutely necessary. [931]

Where a local authority are entrusted by the Legislature with the duty of making public improvements, a power to acquire land conferred upon them by a local Act should be construed favourably to them, and not subjected to a strict and restrictive construction, as is the case, for example, when statutory powers are given to a railway company. The powers of a local authority to acquire land are not confined to the narrow limits of the land actually required for the purposes specified, but they may, for the improvement of their area, purchase, compulsorily or by agreement, all the lands over which the power of purchase is extended by the local Act (*t*) unless a limitation of those powers can be found in the Act (*u*).

As respects land purposed to be acquired by means of a compulsory purchase order under Part VII. of the L.G.A., 1933, such land being in the neighbourhood of a royal palace or park, sect. 175 of that Act (*x*) empowers the M. of H. to make regulations, after consultation with the Commissioners of Works, prescribing the distance from a royal palace or park within which sect. 175 is to have effect (*y*). If land is within the prescribed distance, the Minister must communicate with the Commissioners of Works before confirming the order, or authorising a loan for the acquisition of the land, and consider any recommendation made by the Commissioners. Although, as respects orders, this provision in terms refers only to orders confirmed by the Minister, the reference to the authorisation of loans practically extends the provision to any kind of compulsory purchase order.

A power of selling to a local authority land belonging to the Duchy of Lancaster is conferred on the Chancellor and Council of the Duchy by sect. 173 of the L.G.A., 1933 (*z*). [932]

VII. THE NOTICE TO TREAT

Wherever the Act or order sanctioning the compulsory purchase of land incorporates the procedure of the Act of 1845, a notice to treat should be served unless the owner agrees to sell at an agreed price. The subject is fully dealt with in the title NOTICE TO TREAT, but it seems desirable here to make some reference to this important step in the procedure. The persons upon whom notice to treat is to be served are prescribed by s. 18 of the Act of 1845—see 2 Statutes 1120.

(*r*) *Lamb v. North London Rail. Co.* (1869), 4 Ch. App. 522; 11 Digest 115, 94.

(*s*) *Sadd v. Maldon, Witham and Braintree Rail. Co.* (1851), 6 Exch. 143; 11 Digest 116, 96.

(*t*) *Galloway v. London Corpn.* (1866), L. R. 1 H. L. 34; 11 Digest 117, 109; *Quinton v. Bristol Corpn.* (1874), L. R. 17 Eq. 524; 26 Digest 386, 1147. "I think therefore the fair meaning of the Act is that they (the corpn.) are to take those houses described in the deposited plans, taking the whole of them in order that when they have taken them, they may let out the sites," *per* MALINS, V.C., at p. 533; but see *Sydney Municipal Council v. Campbell*, [1925] A. C. 338, P. C.; Digest (Supp.).

(*u*) *Donaldson v. South Shields Corpn.* (1899), 68 L. J. (Ch.) 162; 11 Digest 119, 125.

(*x*) 26 Statutes 402.

(*y*) The distances are 2 miles in the case of Windsor Castle, Great Park and Home Park, and $\frac{1}{2}$ mile in the case of any other Royal palace or park (Art. 4, L. G. (Compulsory Purchase) Regulations, 1934 (S.R. & O., 1934, No. 363)).

(*z*) 26 Statutes 401.

No special form of notice is prescribed but it must fulfil the requirements of the section and must therefore require the parties served to inform the acquiring authority of the particulars of their estate and interest in the lands to be taken and of their claims in respect thereof, and must also state that the acquiring authority are willing to treat for the purchase of the lands and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

It is important that the notice should accurately describe the area and position of the lands to be acquired (a). So long as the description is not ambiguous, no special form of words is required.

The notice must refer to the statute or order conferring the compulsory powers of purchase.

The notice to treat must be served within the time prescribed by the Act or order conferring the power to purchase, or if no time is prescribed not after three years from the date of the Act or order (b).

If the empowering Act limits the time within which the land is to be acquired, it is not sufficient to serve notice to treat within that period and subsequently refer the question of compensation to arbitration (c), but in the absence of any provision in the empowering Act or order, if notice to treat is served within three years, the subsequent procedure may be completed at any time prior to the expiration of the time limited for the completion of the works (d).

The service of a notice to treat is not in itself an exercise of compulsory powers though it is a step towards the exercise of compulsory powers (e), and a landowner has a right to deal with his property after a notice to treat, although the right must be exercised subject to the rights acquired by the undertakers by virtue of the notice and so as not to increase their obligations (f).

In the case of *Haynes v. Haynes* (g), Kinderley, V.C., said, "I consider that a notice to treat constitutes the relation of vendor and purchaser to a certain extent and for certain purposes that some of the consequences flowing from an actual contract might also flow from a notice to treat. The particular lands are fixed; neither party can get rid of the obligation, the one to take, the other to give up." Under the Act of 1919, however, the obligation of the acquiring authority to take may be discharged because s. 5 (2) enables the authority to withdraw a notice to treat, within six weeks of the receipt of a notice of claim thereunder, subject to payment of compensation for loss or expenses occasioned by the notice to treat having been given and withdrawn. The obligation may also be discharged if notice to treat is served in respect of part only of premises. See the next section of this title. [933]

(a) *Kemp v. London and Brighton Rail. Co.* (1839), 3 Jur. 403; 11 Digest 104, 9; *Protheroe v. Tottenham, etc., Rail. Co.*, [1891] 3 Ch. 278; 11 Digest 113, 83.

(b) Act of 1845, s. 123; 2 Statutes 1156.

(c) *R. v. Webster, Ex parte Marshall* (1931), 95 J. P. 226; Digest (Supp.).

(d) *Kemp v. S. E. Rail. Co.* (1872), 7 Ch. App. 364, at p. 372; 11 Digest 115, 93.

(e) *Goodwin Foster Brown, Ltd. v. Derby Corpn.*, [1934] 2 K. B. 23; Digest (Supp.).

(f) *Cardiff Corpn. v. Cook*, [1923] 2 Ch. 115; Digest (Supp.).

(g) (1861), 30 L. J. (Ch.) 578; 11 Digest 175, 526.

VIII. POWER TO TAKE PART ONLY OF PREMISES

An owner cannot be required to sell part only of any house or other building or manufactory if he is able and willing to sell the whole (*h*). On receipt of a notice to treat for part of any such premises, the owner may give a counter notice to the promoters requiring them to take the whole of the property.

A notice requiring the whole of the premises to be taken may be given by persons under disability (*i*) and by a lessee, but not so as to affect the interest of the reversioner in the land (*j*). No time is specified within which the owner must give the notice (*k*), and the mention of a price by the owner at which he would be prepared to sell the part required, if not accepted, does not preclude him from giving a counter notice (*l*). An agreement between the surveyors of the parties as to the amount of compensation, if it is not confirmed by the principals, does not preclude the owner from giving a valid counter notice (*m*).

The notice is valid if it sufficiently identifies the property (*n*), and is not invalid if it describes the premises as two houses (*o*).

An owner cannot require promoters to take more than the part required if he does not require them to take the whole (*p*).

On receipt of a proper notice from an owner requiring the whole of his premises to be taken, the promoters may withdraw their notice to treat (*q*) and abandon any negotiations in progress (*r*).

Where a notice to treat comprises parts of two separate houses, and the owner gives a counter notice which is followed by a withdrawal of the notice to treat, the owner cannot thereafter sustain a claim that the notice to treat is valid in respect of the premises not referred to in his counter notice (*s*).

If the promoters withdraw the notice to treat on receiving a counter notice, a subsequent withdrawal of the counter notice does not revive the notice to treat (*t*), but if a counter notice is withdrawn before the promoters withdraw their notice to treat the position of vendor and purchaser created by the service of the notice to treat is revived (*u*).

The relation of vendor and purchaser created by the service of the notice to treat is also continued as regards the whole of the premises, if the promoters assent to the counter notice and no special time is fixed by statute within which the promoters may give their assent and act upon the notice to treat as extended by the counter notice (*x*).

(*h*) Act of 1845, s. 92 ; 2 Statutes 1145.

(*i*) *St. Thomas's Hospital (Governors) v. Charing Cross Rail. Co.* (1861), 30 L. J. (Ch.) 395 ; 11 Digest 163, 417.

(*j*) *Pulling v. London, Chatham and Dover Rail. Co.* (1864), 33 L. J. (Ch.) 505 ; 11 Digest 179, 569.

(*k*) The notice is not a statement of particulars of claim with respect to the land within the meaning of s. 21 of the Act of 1845 ; 2 Statutes 1121, and need not be given within twenty-one days of service of the notice to treat. *Schwinge v. London and Blackwall Rail. Co.* (1855), 24 L. J. (Ch.) 405 ; 11 Digest 183, 613.

(*l*) *Gardner v. Charing Cross Rail. Co.* (1861), 31 L. J. (Ch.) 181 ; 11 Digest 183, 614 ; *Lavers v. L.C.C.* (1905), 93 L. T. 233 ; 11 Digest 183, 620.

(*m*) *Pollard v. Middlesex County Council* (1906), 95 L. T. 870 ; 1 Digest 384, 885.

(*n*) *Ibid.*

(*o*) *Harvie v. South Devon Rail. Co.* (1874), 32 L. T. 1, C. A. ; 11 Digest 180, 576.

(*p*) *Pulling v. London, Chatham and Dover Rail. Co.*, *supra*.

(*q*) *King v. Wycombe Rail. Co.* (1860), 29 L. J. (Ch.) 462 ; 11 Digest 179, 565 ; *Ex parte Quicke* (1865), 12 L. T. 580 ; 16 Digest 326, 1397.

(*r*) *R. v. London and South Western Rail. Co.* (1848), 12 Q. B. 775 ; 16 Digest 385, 1540.

(*s*) *Thompson v. Tottenham and Forest Gate Rail. Co.* (1892), 67 L. T. 416.

(*t*) *Ex parte Quicke*, *supra*.

(*u*) *Pinchin v. London and Blackwall Rail. Co.* (1854), 5 De G. M. & G. 851 ; 11 Digest 182, 601.

(*x*) *Schwinge v. London and Blackwall Rail. Co.*, *supra*.

Inconvenience may be caused to landowners if promoters, a considerable time after receipt of the counter notice, assent thereto and proceed to take the whole of the property, but the landowner has power in his own hands to give such a notice at any time as will bring matters to an issue and enable him to ascertain his position. [934]

The word "house" comprises everything which would pass by that word in a conveyance; thus where the property consists of a house and stables with garden, pleasure grounds and orchard, and the promoters propose to take part of the orchard, they are bound, if the owner so requires, to take the whole (*y*), but the expression "house" does not include land which is not necessary to the occupation of the house (*z*).

Where premises are in course of erection, both the premises being built and contemplated extensions, together with the land forming the site, are to be deemed a house (*a*); so in like manner two houses with internal communications which are used for the purposes of one business are a house (*b*).

A garden attached to a house is included in the expression "house" (*c*) even though a part of the garden is held under a separate demise (*d*) and the garden of a hospital is also part of a house (*e*).

The expression "house" does not, however, include land which is not necessary for the convenient use and occupation of the house, but only for the personal use and convenience of the owner and occupier; so where the owner or occupier of a house owned six acres of meadow on the other side of a road, and used the meadow land for feeding horses and cows requisite for his estate, it was held that the meadow land was not part of the house (*f*).

The fact that land is separated from a house by a road or footpath does not necessarily exclude such land from forming part of a house within the section, and where land was separated by a public footpath from the house, but had been treated for sixty years as passing to the to the lessee on every demise, it was held to be part of the house (*g*). On the other hand, land separated from a house by a sunk hedge, the ditch being crossed by bridges and the land being used for keeping cows and occasionally for purposes of amusement, was held to be not part of the house (*h*).

(*y*) *King v. Wycombe Rail. Co.* (1860), 29 L. J. (Ch.) 462; 11 Digest 179, 565.

(*z*) *Fergusson v. London, Brighton and South Coast Rail. Co.* (1863), 11 W. R. 1088; 11 Digest 179, 563; *Pulling v. London, Chatham and Dover Rail. Co.* (1864), 33 L. J. (Ch.) 505; 11 Digest 179 569; *Steele v. Midland Rail. Co.* (1866), 1 Ch. App. 275; 11 Digest 180, 570; *Kerford v. Seacombe, Hoylake and Deeside Rail. Co.* (1888), 57 L. J. (Ch.) 270; 11 Digest 181, 590.

(*a*) *Grosvenor v. Hampslead Junction Rail. Co.* (1857), 26 L. J. (Ch.) 731; 11 Digest 180, 574; *Alexander v. Crystal Palace Rail. Co.* (1862), 30 Beav. 556; 11 Digest 180, 575.

(*b*) *Siegenberg v. Metropolitan District Rail. Co.* (1883), 49 L. T. 534; 11 Digest 181, 577; *Richards v. Swansea Improvement and Tramways Co.* (1878), 9 Ch. D. 425, C. A.; 11 Digest 178, 562.

(*c*) *Cole v. West London and Crystal Palace Rail. Co.* (1859), 28 L. J. (Ch.) 767; 11 Digest 181, 580.

(*d*) *MacGregor v. Metropolitan Rail. Co.* (1866), 14 L. T. 354; 11 Digest 181, 581.

(*e*) *St. Thomas's Hospital (Governors) v. Charing Cross Rail. Co.* (1861), 30 L. J. (Ch.) 395; 11 Digest 163, 417.

(*f*) *Steele v. Midland Rail. Co.*, *supra*; see also *Kerford v. Seacombe, Hoylake and Deeside Rail. Co.*, *supra*; and *Fergusson v. London, Brighton and South Coast Rail. Co.*, *supra*.

(*g*) *Pulling v. London, Chatham and Dover Rail. Co.*, *supra*.

(*h*) *Ibid.*

A paddock to which access was gained through the garden of a house and from a public road running along the far side of the paddock was held to be part of the house (*i*).

Land subject to an agreement by the landlord to grant a future lease to enable the lessee of the house to extend his garden was held not to be part of the house (*k*).

Where a railway company proposed to take part of a private road leading to a mansion at a spot a quarter of a mile from the house, it was held that the part of the private road in question would not pass on a conveyance of the mansion by the description of "house" and that it was therefore not a part of the house (*l*). [935]

The words "other building," in the phrase "any house or other building or manufactory" mean other building in the nature of a house, though in ordinary language the building would not be described as a house. They do not, however, include such an undertaking as a canal, notwithstanding the fact that the canal undertaking comprises a number of structures which may be buildings, but do not constitute one building (*m*). [936]

The term "manufactory" means an actual manufactory and does not include adjoining conveniences (*n*) nor does it mean land employed for business not involving manufacture, though portions of the whole of the land may be used for auxiliary manufacturing processes (*o*). Where land was used for collecting and disposing of the contents of dust bins, one portion being used as a sorting place and others for the conversion of the refuse into cement and into manure; held that the first-mentioned portion could be taken compulsorily without the rest of the land (*o*).

Machinery for storing and conveying power for a manufactory worked by water power is part of a manufactory (*p*), and where adjoining houses are used as a manufactory, though one of the houses is used in part only for the purposes of manufacturing, the whole has been held to be a manufactory (*q*).

A building where tea is broken up, blended and mixed or a building where tea is packed is not a manufactory (*r*). [937]

The decisions to which reference has been made were decisions on the effect of sect. 92 of the Lands Clauses Consolidation Act, 1845 (*s*). But the Sixth Schedule to the L.G.A., 1933 (*t*), excludes sect. 92 of the Act of 1845 from incorporation with any order for the compulsory

(*i*) *Barnes v. Southsea Rail. Co.* (1884), 27 Ch. D. 536; 11 Digest 181, 592. See also *Low v. Staines Reservoirs Joint Committee* (1900), 64 J. P. 212; 11 Digest 180, 572.

(*k*) *Chambers v. London, Chatham and Dover Rail. Co.* (1863), 11 W. R. 479.

(*l*) *Allhusen v. Ealing and South Harrow Rail. Co.* (1898), 78 L. T. 285, 396, C. A.; 11 Digest 181, 594.

(*m*) *Regent's Canal and Dock Co. v. L.C.C.*, [1912] 1 Ch. 588; 11 Digest 181, 595. See also the remarks of BRETT, L.J., in *Richards v. Swansea Improvement and Tramways Co.* (1878), 9 Ch. D. 425, C. A.; 11 Digest 178, 562.

(*n*) *Barker v. North Staffordshire Rail. Co.* (1848), 2 De G. & Sm. 55; 11 Digest 220, 1043.

(*o*) *Reddin v. Metropolitan Board of Works* (1862), 4 De G. F. & J. 532; 11 Digest 182, 597.

(*p*) *Furniss v. Midland Rail. Co.* (1868), L. R. 6 Eq. 473; 11 Digest 182, 605.

(*q*) *Brook v. Manchester, Sheffield and Lincolnshire Rail. Co.*, [1895] 2 Ch. 571 11 Digest 182, 610.

(*r*) *Benington & Sons v. Metropolitan Board of Works* (1886), 54 L. T. 837; 11 Digest 182, 607.

(*s*) 2 Statutes 1145.

(*t*) 26 Statutes 508.

purchase of land made either under sect. 160 or sect. 161 of that Act, and para. 2 of the Sixth Schedule contains a provision which is to take effect in substitution for sect. 92 of the Act of 1845. The effect of the new provision is that no person is to be required to sell a part only of any house, building or manufactory, or of any land which forms part of a park or garden belonging to a house, if he is able and willing to sell the whole of it, unless the tribunal by whom compensation is assessed determine that such part of a house, building or manufactory can be taken without material detriment to it, or that such part of a park or garden can be taken without seriously affecting the amenity or convenience of the house. Compensation may, however, be awarded by the tribunal in such a case, in respect of the severance of the part so proposed to be taken, in addition to the value of that part (*u*). Similar provisions also occur in the Development and Road Improvement Funds Act, 1909, the Housing Act, 1930, the Public Works Facilities Act, 1930, and the Town and Country Planning Act, 1932 (*a*). [938]

IX. SUPERFLUOUS LANDS

The provisions contained in the Lands Clauses Consolidation Act, 1845, with regard to the sale of superfluous lands (*b*) are frequently excepted from incorporation by the special Act (*c*), and county councils and councils of boroughs, urban districts and rural districts, may, with the consent of the Minister of Health, sell any land which they may possess, which is not required for the purpose for which it was acquired or is being used (*d*). A parish council may sell any such land with the consent of the parish meeting and of the Minister (*e*). [939]

In cases where the provisions as to superfluous lands are incorporated, lands acquired by promoters, for which they have compulsory powers of purchase, which are not required for the authorised undertaking, must be sold and disposed of within the period prescribed by the special Act for that purpose, or if no period is prescribed, then within ten years of the time prescribed for the completion of the works (*f*). The fact that the lands may have been acquired by agreement, without putting into force the compulsory powers, makes no difference (*g*). If superfluous lands remain unsold at the expiration of the period fixed, they vest in the owners of adjoining lands, in proportion to the extent of their lands respectively adjoining the same (*f*).

The vesting takes place by the operation of the Statute, without the necessity of any step being taken by the adjoining owner (*h*). [940]

(*u*) 26 Statutes 508.

(*a*) 9 Statutes 207; 23 Statutes 396; 23 Statutes 769; 25 Statutes 530.

(*b*) Act of 1845, ss. 127—132; 2 Statutes 1158—1160.

(*c*) *E.g.* Development and Road Improvement Funds Act, 1909, s. 5, Sched. (2) (*d*); 9 Statutes 211, 217; L.G.A., 1933, ss. 160 (6), 161 (2), Sched. VI., para. 1; 26 Statutes 394, 508.

(*d*) *Ibid.*, s. 165; *ibid.*, 397. Corporate land is dealt with in another provision of the Act, see s. 172 and the title CORPORATE LAND.

(*e*) *Ibid.*, s. 170. If the land is held for charitable purposes, such consent or approval to a sale must be obtained as is required under the Charitable Trusts Act, 1853 to 1925, as amended by the Board of Education Act, 1899. *Ibid.*

(*f*) Act of 1845, s. 127; 2 Statutes 1158. The word "dispose" in this and the following section means a transfer of the land to some other person, not the application of it by the owners to a different purpose. *Astley v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1858), 27 L. J. (Ch.) 478; 11 Digest 284, 2122.

(*g*) *Hooper v. Bourne* (1880), 5 App. Cas. 1, H. L., affirming (1877), 3 Q. B. D. 258, C. A.; 11 Digest 283, 2120.

(*h*) *Great Western Rail. Co. v. May* (1874), L. R. 7 H. L. 283; 11 Digest 283, 2121. And see *Norton v. London and North Western Rail. Co.* (1879), 13 Ch. D. 268; 11 Digest 285, 2133.

Lands may become superfluous, when not sold within the time limited, if on the completion of the works it is found that more land has been taken than appears to be necessary; or if the promoters have been compelled to take more land than is needed (*i*); or if lands taken for permanent works are afterwards found not to be required; or if lands are taken for temporary purposes and those purposes have been fulfilled (*k*); or if land is permanently used for purposes not authorised (*l*), or advertised for sale as surplus land (*m*). [941]

Land does not become superfluous if it is acquired for extraordinary purposes by agreement (*n*), or acquired under powers conferred by a special Act to purchase by agreement (*o*) or, in the case of land subject to compulsory powers, acquired after the time allowed for compulsory purchase. [942]

Land under arches is not superfluous (*p*) nor land over a tunnel (*q*).

Small pieces of land adjoining authorised works can rarely, if ever, become superfluous (*r*).

If the promoters intend to use land for authorised works, though not necessarily within a specified time, or if evidence is forthcoming that it will be wanted for the undertaking at some future time, the land is not superfluous (*s*).

A temporary letting is not evidence that land has become superfluous (*t*), nor is the fact that it has been acquired by other promoters having compulsory powers (*u*) or dedicated to purposes subordinate to but not inconsistent with the general purposes for which the land was authorised to be acquired (*a*). [943]

A sale by promoters of superfluous land must be absolute, and

(*i*) Act of 1845, s. 92; 2 Statutes 1145.

(*k*) *Great Western Rail. Co. v. May* (1874), L. R. 7 H. L. 283; 11 Digest 283, 2121.

(*l*) *Beauchamp (Lord) v. Great Western Rail. Co.* (1868), 3 Ch. App. 745; 11 Digest 284, 2124.

(*m*) *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; 11 Digest 284, 2125, but see *contra*, *Moody v. London, Brighton and South Coast Rail. Co.* (1861), 31 L. J. (Q. B.) 54; 11 Digest 286, 2139; *Macfie v. Callander and Oban Rail. Co.*, [1898] A. C. 270; 11 Digest 286, 2137.

(*n*) Act of 1845, s. 12; 2 Statutes 1118. See *City of Glasgow Union Rail. Co. v. Caledonian Rail. Co.* (1871), L. R. 2 Sc. & Div. 160; 11 Digest 119, 127. The procedure for dealing with such lands is prescribed by s. 13; 2 Statutes 1118.

(*o*) *Horne v. Lymington Rail. Co.* (1874), 31 L. T. 167; 11 Digest 119, 128, where the land was outside the limits of deviation.

(*p*) *Mulliner v. Midland Rail. Co.* (1879), 11 Ch. D. 611; 11 Digest 121, 139.

(*q*) *Re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D. 607; 11 Digest 283, 2110, but see *contra*, *Midland Rail. Co. v. Wright*, [1901] 1 Ch. 738; 32 Digest 486, 1482.

(*r*) *Betts v. Great Eastern Rail. Co.* (1879), 49 L. J. (Q. B.) 197; (1878), 3 Ex. D. 182, C. A.; 11 Digest 285, 2128; *Harris v. London and South Western Rail. Co.* (1889), 60 L. T. 392; 11 Digest 286, 2135; *Macfie v. Callander and Oban Rail. Co.*, *supra*.

(*s*) *Hooper v. Bourne* (1880), 5 App. Cas. 1, H. L., affirming (1877), 3 Q. B. D. 258, C. A.; 11 Digest 283, 2120; *Betts v. Great Eastern Rail. Co.*, *supra*.

(*t*) *Foster v. London, Chatham and Dover Rail. Co.*, [1895] 1 Q. B. 711; 11 Digest 122, 145; *A.-G. v. Teddington U.D.C.*, [1898] 1 Ch. 66; 11 Digest 120, 134. The latter case arose under s. 175 of the P.H.A., 1875.

(*u*) *Dunhill v. North Eastern Rail. Co.*, [1896] 1 Ch. 121; 11 Digest 286, 2136. See also *Hobbs v. Midland Rail. Co.* (1882), 20 Ch. D. 418; 11 Digest 285, 2126 (purported conveyance to another promoter of lands to be held for joint undertaking).

(*a*) *Grand Junction Canal Co. v. Petty* (1888), 21 Q. B. D. 273; 11 Digest 121, 142; and cf. *Re Gonty and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; 11 Digest 131, 197.

without the reservation of any rights to themselves (*b*), though the promoters may impose restrictive covenants conducing to their advantage (*c*). [944]

The purchaser acquires no greater rights than the promoters (*d*) and may acquire less (*e*). On a sale by promoters there is an implied obligation not to derogate from their grant, except so far as may be required for the construction of the works (*f*).

In conveyances of land by promoters under the Lands Clauses Acts or the special Act, the word "grant" implies a covenant that the vendor is seised of the land for an estate in fee simple, or for the estate expressed to be granted, free from incumbrances, together with covenants for quiet enjoyment and further assurance (*g*).

On a sale of superfluous lands by promoters, certain rights of pre-emption are given to the person entitled to the land (if any) from which the superfluous land was originally severed, and to adjoining owners, but these rights only affect lands which are not situate in a town or are not built upon or used for building purposes (*h*).

The word "town" is for this purpose used to denote an area where there is such an amount of continuous, though not necessarily contiguous, occupancy of the ground by houses that persons may be said to be living, as it were, in the same town (*i*). The fact that land is within a borough boundary is a circumstance not to be overlooked, but is not conclusive, nor does the existence of a cottage, in rural surroundings, bring land within the expression "built upon" (*k*).

Land "used for building purposes" is land where the houses are actually laid out or where the land has been sold or let on building leases (*l*). [945]

The condition as to pre-emption must be fulfilled by offering to sell the land first to the person entitled to the land, if any, from which the same was originally severed (*m*), and if he declines the offer, or if

(*b*) S. 127; 2 Statutes 1158; *London and South Western Rail. Co. v. Gomm* (1882), 20 Ch. D. 562; 11 Digest 286, 2141 (sale with covenant for repurchase held *ultra vires*); *Ray v. Walker*, [1892] 2 Q. B. 88; 11 Digest 286, 2142; *Re Thackwray and Young's Contract* (1888), 40 Ch. D. 34; 11 Digest 286, 2143; 40 Digest 151, 1204.

(*c*) *Re Higgins and Hitchman's Contract* (1882), 21 Ch. D. 95; 11 Digest 287, 2144.

(*d*) *Pountney v. Clayton* (1883), 11 Q. B. D. 820; 11 Digest 288, 2174 (no right of support where vendors had not purchased subjacent mines).

(*e*) *Bird v. Eggleton* (1885), 29 Ch. D. 1012; 11 Digest 289, 2176 (revival on sale, of covenant restricting building).

(*f*) *Myers v. Catterson* (1889), 43 Ch. D. 470; 11 Digest 288, 2175.

(*g*) Act of 1845, s. 132; 2 Statutes 1160, and see Law of Property Act, 1925, s. 7; 15 Statutes 188. For form of conveyance of superfluous lands, see 9 Ency. Forms, p. 101.

(*h*) Act of 1845, s. 128; 2 Statutes 1159.

(*i*) *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; 11 Digest 284, 2125; *Carington (Lord) v. Wycombe Rail. Co.* (1868), 3 Ch. App. 377; 11 Digest 287, 2150.

(*k*) *Carington (Lord) v. Wycombe Rail. Co.*, *supra*. An open space unbuilt upon, if surrounded by continuous houses, may be part of the town, within the meaning of the Railways Clauses Consolidation Act, 1845, s. 11; 14 Statutes 35, but a railway is not in a town until it reaches an area continuously built upon. *Elliott v. South Devon Rail. Co.* (1848), 2 Exch. 725; 38 Digest 264, 73.

(*l*) *Coventry v. London, Brighton and South Coast Rail. Co.* (1867), L. R. 5 Eq. 104; 11 Digest 287, 2156.

(*m*) As to what constitutes severance, see *ante*. The right devolves on the successors in title of the original vendor and arises before the expiration of the prescribed period if the land is offered for sale to a third party. *Carington (Lord) v. Wycombe Rail. Co.*, *supra*.

such person cannot after diligent inquiry be found, then to the owner of the lands immediately adjoining the lands to be sold (*n*), and if more than one, then to each such owner in succession in such order as the promoters think fit. It is not, of course, necessary to make an offer to a person incapable of entering into a contract of purchase (*o*). A right of pre-emption ceases if the offer is not accepted within six weeks (*p*). If an offer is accepted, but the price is not agreed, this must be ascertained by arbitration, and the costs of the arbitration are in the discretion of the arbitrators (*q*). [946]

X. ASSESSMENT OF PURCHASE PRICE AND COMPENSATION

Various methods are prescribed by statute for the ascertainment of the amount of purchase money or compensation to be paid to an owner whose land is taken for or injuriously affected by the works of statutory undertakers.

Under the Lands Clauses Acts the assessing tribunal may be either two justices, or a common jury or a special jury, or two arbitrators, or an umpire appointed by the arbitrators, or the compensation may be ascertained by a surveyor or by two surveyors.

Under the Acquisition of Land (Assessment of Compensation) Act, 1919, the tribunal may be an official arbitrator, or a single arbitrator appointed by the parties, or the Commissioners of Inland Revenue. Since the passing of this Act, the occasions are rare on which the procedure of the Lands Clauses Acts applies where a local authority acquire land, though that procedure may still have to be followed where land is acquired or injuriously affected by statutory undertakers trading for profit, or where land is injuriously affected by the execution of works by a local authority or other statutory undertaker (*r*).

Whatever may be the nature of the assessing tribunal, their only duties are (i.) to award or determine the amount of the compensation to be paid, and (ii.) to apportion rent in cases where land acquired by a Government department or a local or public authority is subject to a lease which also comprises land not acquired (*s*). Neither the title of the claimant, nor the liability of the undertakers to pay, can be

(*n*) Land is adjoining if separated only by a private road, *Coventry v. London, Brighton and South Coast Rail. Co.* (1867), L. R. 5 Eq. 104; 11 Digest 288, 2163; or by a wall owned jointly, *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; 11 Digest 284, 2125, and although it has been purchased from the promoters. *Ibid.*

(*o*) Act of 1845, s. 128; 2 Statutes 1159. Absence from the country would appear to be a valid reason for not making an offer, see s. 129. The offer may be made before the expiration of the prescribed period, *London and South Western Rail. Co. v. Gomm* (1882), 20 Ch. D. 562, per JESSEL, M.R., at p. 584; 11 Digest 286, 2141.

(*p*) Act of 1845, s. 129; 2 Statutes 1159. A declaration made by a disinterested person before a justice as to offers, non-acceptance of offers and reasons for not making offers is sufficient evidence of the facts therein stated. *Ibid.*

(*q*) Act of 1845, s. 130; 2 Statutes 1159. The provisions of the Lands Clauses Acts as to arbitration on compulsory purchase do not apply. *Jones v. South Staffordshire Rail. Co.* (1869), 19 L. T. 603; 11 Digest 288, 2167; and see *Re Eyre's Trusts*, [1869] W. N. 76; 11 Digest 288, 2168 (right of pre-emption given by agreement on purchase of lands by promoters: costs of arbitration treated as costs of re-investment).

(*r*) See "Acquisition of Land (Assessment of Compensation) Act, 1919," at p. 406, *ante*.

(*s*) Act of 1919, s. 1; 2 Statutes 1176.

raised in proceedings before the tribunal, and any such question must be settled on an action to enforce the award (*t*).

If a tribunal, acting in excess of their jurisdiction, make an erroneous finding as to a claimant's title, the award may be set aside (*u*), but it is within the power of the tribunal to find that no compensation is payable or that no damage has been done to the land in respect of which the claim is made (*a*).

It follows, therefore, that proceedings to assess compensation will not be restrained by injunction on the ground that a claimant is not entitled to compensation (*b*), and that a submission to proceedings to assess the compensation will not estop the undertakers from subsequently claiming that the legal estate is in them (*c*).

A tribunal cannot make an award dealing with accommodation works, nor, except as provided by the Acquisition of Land (Assessment of Compensation) Act, 1919 (*d*), apportion rent (*e*). [947]

Where land of a local authority or charity trustees without powers of sale is compulsorily purchased, sect. 69 of the Act of 1845 (*f*), required the purchase money to be paid into court instead of to the vendors. This provision is modified by sect. 177 of the L.G.A., 1933 (*g*), as respects purchase money or compensation payable by one local authority to another local authority in pursuance of Part VII. of that Act, meaning so payable in pursuance of an order made under that part of the Act. The section enables the Minister of Health to give directions as to the payment and application of the money, if he consents so to do, and it need not be paid into court. A similar provision also occurs in sect. 129 of the Housing Act, 1925 (*h*). [948]

Another enactment modifying the Lands Clauses Acts as respects the application of purchase money or compensation for damage to glebe land or other land belonging to an ecclesiastical benefice will be found in para. 3 of the modifications of those Acts contained in the Sixth Schedule to the Act of 1933 (*i*). This provision requires the money to be paid to the Ecclesiastical Commissioners, and to be applied by them as money paid to them on a sale of land belonging to a benefice. [949]

XI. METHODS OF DETERMINATION OF COMPENSATION

1. **Under the Act of 1919.**—The determination of questions of disputed compensation or apportionment of rent is effected by an official arbitrator appointed on the application of either party (*k*)

(*t*) *Brierley Hill Local Board v. Pearsall* (1884), 9 App. Cas. 595, H. L.; 11 Digest 292, 2209; *London and Blackwall Rail. Co. v. Cross* (1886), 31 Ch. D. 354, C. A.; 11 Digest 187, 672. A special jury may, however, with the consent of the parties, try an inquiry other than that for which they have been struck and reduced; Act of 1845, s. 56; 2 Statutes 1131.

(*u*) *R. v. London and North Western Rail. Co.* (1854), 23 L. J. (Q. B.) 185; 11 Digest 185, 655.

(*a*) *R. v. Lancaster and Preston Junction Rail. Co.* (1845), 6 Q. B. 759; 11 Digest 185, 653.

(*b*) *London and Blackwall Rail. Co. v. Cross*, *supra*.

(*c*) *Campbell v. Liverpool Corpn.* (1870), L. R. 9 Eq. 579; 11 Digest 186, 662.

(*d*) See *ante*, p. 410.

(*e*) *Re Ware and Regent's Canal Co.* (1854), 9 Exch. 395; 11 Digest 186, 667.

(*f*) 2 Statutes 1135.

(*g*) 26 Statutes 403.

(*h*) 13 Statutes 1068.

(*i*) 26 Statutes 508.

(*k*) Act of 1919, s. 1 (1); 2 Statutes 1176; Acquisition of Land (Assessment of Compensation) Rules, 1919 (S.R. & O., 1919, No. 1836).

unless the parties agree to a determination made either (i.) by an assessment made by the Commissioners of Inland Revenue, or (ii.) by the arbitration of an agreed arbitrator (l).

The official arbitrator is to be selected from a panel of men and women with special knowledge in the valuation of land, appointed by the Reference Committee established for the purpose by the Act (m).

At any time after the expiration of fourteen days from the service of the notice to treat (n), the acquiring authority or the claimant may apply to the Reference Committee for the selection of an official arbitrator, and the party making the application must immediately send notice of the fact to the other party, with a copy of the application (o). The application must be in the prescribed form (p) and must bear a stamp of the value of £1 (q).

The Reference Committee, as soon as they have selected an arbitrator, inform the parties of his name and address (r), and send to the arbitrator selected a copy of the application of the acquiring authority (s).

The arbitrator need not make any declaration before entering upon his duties (t), such as is required under the Lands Clauses Acts (u).

The Reference Committee may revoke the reference to the selected arbitrator and select another arbitrator in the case of the death or incapacity of the arbitrator originally selected, or in any other case before the making of the award, if it is shown to the Committee that such a course is expedient (a).

The Reference Committee may also select an arbitrator, without application by either party, if a question has been referred to the Commissioners of Inland Revenue for their determination, and the Commissioners have declined to proceed with the reference (b).

The acquiring authority, but not a claimant, may apply to the Reference Committee to have the same arbitrator appointed to hear and determine questions of compensation, in cases where notices to treat have been served on the owners of separate interests in the same land and questions as to the amount of compensation have arisen in the cases of two or more of those interests (c).

(l) Act of 1919, s. 8 (1); 2 Statutes 1181.

(m) *Ibid.*, s. 1 (2), (5); *ibid.*, 1177. The official arbitrators are to hold office for terms fixed by the Treasury, and while holding office must not engage, or be a partner of any person who engages, in private practice or business (s. 1 (3)). They are paid salaries, determined by the Treasury, out of moneys provided by Parliament (s. 1 (4)).

(n) See title NOTICE TO TREAT.

(o) Acquisition of Land (Assessment of Compensation) Rules, 1919 (S.R. & O., 1919, No. 1836), r. 3 (1), (2).

(p) *Ibid.*, r. 3 (3), Sched. A. The application should be sent to the Secretary of the Reference Committee, Room 121, Royal Courts of Justice, Strand, London, W.C.2.

(q) *Ibid.*, r. 8; Acquisition of Land (Assessment of Compensation) Fees Rules, 1920 (S.R. & O., 1920, No. 285), r. 2.

(r) Rules of 1919, *supra*, rr. 4. 9.

(s) R. 5 (2). The selection of an arbitrator is equivalent to an appointment. There is no reference to the appointment of an arbitrator in the Act or the rules made under the Act, except in r. 5 (2).

(t) Act of 1919, s. 3 (2); 2 Statutes 1179.

(u) Act of 1845, s. 33; 2 Statutes 1125.

(a) R. 6. This rule has been applied where an arbitrator disqualified himself by returning to his business. The rule was held not to be *ultra vires*. *Gross, Sherwood and Heald, Ltd. v. Essex County Council*, [1927] 1 Ch. 205; Digest (Supp.).

(b) Act of 1919, s. 8 (2) (e), see "Assessment by Inland Revenue Commissioners," *post*.

(c) *Ibid.*, s. 4; 2 Statutes 1179; Acquisition of Land (Assessment of Compensation) Rules, 1919 (S.R. & O., 1919, No. 1836), r. 7 (1).

If any such application is made, it must be in respect of the whole of the cases of disputed compensation relating to the same land, and must be made in the form prescribed or in a form to the like effect (*d*).

Such an application may be made either before or after the applications have been made for selection of an arbitrator, but must precede the entry by the arbitrator on the consideration of the claim (*e*).

The reference committee are bound to comply with an application made in conformity with the rules, and so far as is necessary for this purpose, may revoke any selection previously made (*f*).

If an arbitrator is selected, the acquiring authority may apply to him for an order that all the claims shall be heard together (*g*), and notice of the application must be sent to each of the claimants specifying the date and place where the arbitrator will hear objections to the application (*h*).

If a claimant desires to object to the application, he must send notice to the arbitrator and to the acquiring authority within seven days of the receipt of the notice of hearing (*i*).

After hearing and considering any such objections, the arbitrator may make such order as he thinks proper having regard to the circumstances, and may, if he thinks fit, make an order consolidating some only of the claims, and the order may in any case give such directions as to witnesses, method of procedure, and otherwise as the arbitrator thinks proper (*k*). It is, however, necessary that the value of the several interests in the land having a market value should be separately assessed (*l*).

The Arbitration Act, 1889, applies to arbitrations under the Act of 1919, except so far as it is inconsistent with that Act or the Lands Clauses Acts, or any rules or procedure authorised or recognised by those Acts (*m*). [950]

Procedure before Official Arbitrator.—The official arbitrator selected to deal with the case must proceed as soon as may be to determine the question referred to him, and must arrange the time and place of hearing with the parties (*n*). The proceedings are to be such as he may think fit, subject to the Act of 1919 and the rules and to any specific directions which may be given to him by the reference committee (*o*). The hearing must be public (*p*).

The arbitrator may enter on and inspect the land which is the subject of the inquiry (*q*), and for the purpose of assessing compensation may call for returns and assessments of capital value made or acquiesced in by the claimant (*r*), and any documents or information which it is within the power of either of the parties to furnish, for the purpose of considering and determining the case (*s*). When documents are supplied to the arbitrator, care should be taken to exclude any correspondence or documents relating to tentative proposals for a settlement of the disputed compensation, the communication of which to the arbitrator might incapacitate him from acting.

There is no restriction upon the number of witnesses who may be

(*d*) R. 7 (1) (3), Sched. B.

(*f*) R. 7 (2).

(*h*) R. 7 (5).

(*k*) R. 7 (7), (8).

(*m*) Arbitration Act, 1889, s. 24; 1 Statutes 464; see title ARBITRATIONS, Vol. I., p. 386.

(*n*) R. 5 (1).

(*p*) Act of 1919, s. 3 (5).

(*r*) *Ibid.*, s. 2 (2) *ad fin.*

(*e*) R. 7 (1).

(*g*) R. 7 (4).

(*i*) R. 7 (6).

(*l*) Act of 1919, s. 4; 2 Statutes 1179.

(*o*) R. 5 (3).

(*q*) *Ibid.*, s. 3 (4).

(*s*) R. 5 (2).

called by the parties, but unless the arbitrator otherwise directs, only one expert witness is to be heard on either side. If, however, the claim for compensation involves claims in respect of minerals, or of disturbance of business, as well as compensation for land taken, one additional expert witness on either side is to be allowed to be heard in respect of each of such additional claims (*t*).

If requested by either party, the arbitrator must specify the amount awarded in respect of any particular matter which is a subject of award (*u*). The award must be stamped before delivery with a stamp of the value of 10s. (*a*), and of the value of the fee payable under the scale of fees and awards prescribed by the rules made by the Treasury (*b*).

The decision of an arbitrator upon any question of fact is final and binding on the parties, but on any question of law he may state a case for the opinion of the High Court at any stage of the proceedings, and must do so if the court directs; or he may state his award in the form of a special case for the opinion of the court. In either event there is no right of appeal (*c*). [951]

Procedure before Agreed Arbitrator.—If the parties agree to refer to an arbitrator agreed on between them any question of disputed compensation or apportionment of rent to the settlement of which the Acquisition of Land (Assessment of Compensation) Act, 1919, applies, the arbitration will be conducted in accordance with the provisions of that Act, except that the agreed arbitrator takes the place of an official arbitrator, consolidation of proceedings where more than one interest in the land is involved can only be effected by agreement, the hearing need not be in public, and the provisions of the Act and rules in relation to the fixing of fees do not apply (*d*).

No provision is made as to the course to be pursued if the agreed arbitrator dies or becomes incapacitated before making the award. In such a contingency, it would no doubt be open to the parties to agree on a reference to another agreed arbitrator or to the Commissioners of Inland Revenue, or for either party to make application for the selection of an official arbitrator. [952]

Assessment by Inland Revenue Commissioners.—If the parties agree to refer any question of disputed compensation or apportionment of rent to the Commissioners of Inland Revenue for determination, the Commissioners will cause an assessment of compensation to be made. An officer of the Commissioners may enter on and inspect the land; the parties must furnish to the Commissioners such information and documents as they may require; the parties are to be heard if they so desire, before an officer of the valuation office, and the assessment when published is to take effect as if it were an award of an official arbitrator (*e*). The determination being in the nature of a valuation and not an award, the Commissioners have no power to state a case, or to make a determination in the form of a special case. The provisions of the Act and rules as to fees do not apply, and no power is given to the Commissioners to award costs.

The Commissioners may decline to proceed with the assessment

(*t*) Act of 1919, s. 3 (1); 2 Statutes 1179.

(*u*) *Ibid.*, s. 3 (3); *ibid.*

(*a*) Revenue Act, 1906, s. 9; 16 Statutes 735.

(*b*) Acquisition of Land (Assessment of Compensation) Fees Rules, 1920 (S.R. & O., 1920, No. 285), r. 3.

(*c*) Act of 1919, s. 6 (1), (2); 2 Statutes 1180.

(*d*) *Ibid.*, s. 8 (1), (3); *ibid.*, 1181, 1182.

(*e*) *Ibid.*, s. 8 (1), (2).

if either party refuses or neglects to comply with their directions, whereupon the case shall be referred to an official arbitrator (*f*) who will commence the proceedings *de novo*. [953]

2. **Under the Lands Clauses Acts.**—The provisions of the Lands Clauses Acts with regard to procedure for assessment of compensation having to a large extent been superseded by the Acquisition of Land (Assessment of Compensation) Act, 1919, now only apply in cases (i.) where land is compulsorily acquired by undertakers, not being a Government department or local authority, who trade for profit, and (ii.) where other land is injuriously affected by the taking of land by such undertakers, and probably where other land is injuriously affected, otherwise than by severance or by reason of disturbance of business, by the taking of land by a Government department or a local authority (*g*). [954]

Under the Lands Clauses Acts, a disputed claim for compensation is to be determined by two justices—

- (i.) in the case of claims by tenants having no greater interest than as tenant for a year or from year to year, whatever the amount of the claim may be (*h*), unless the claim is one for injurious affection or in respect of lands already taken by the undertakers (*i*); and
- (ii.) in other cases where the claim for taking of land or for injurious affection, or both, does not exceed £50 (*k*). [955]

The assessment in cases where the Act of 1845 does not provide for determination by the justices is to be determined—

- (i.) if the claim is for injurious affection or in respect of land or any interest therein which has been actually taken by the undertakers; by arbitration or by a jury at the option of the claimant (*l*).
- (ii.) in other cases; by the verdict of a common jury, or a special jury (*m*) unless the claimant elects to proceed by way of arbitration (*n*). [956]

Sect. 68 of the Lands Clauses Consolidation Act, 1845, prescribes the procedure to be adopted for the settlement of compensation in the absence of agreement in respect of lands which have been actually taken, or which have been injuriously affected by the execution of the works in all cases where the amount claimed exceeds £50 (*o*).

The method of obtaining compensation being set out in the section, it is not competent to any party alleging injurious affection of his property to proceed by any other method, as for example, by injunction to restrain the execution of the works, or by action for trespass, or by demanding compliance with sects. 84 and 85 of the Act of 1845, provided the local authority or other undertakers have properly exercised their powers. The question as to whether sect. 68 is incorporated in the special Act or not is therefore one of importance, especially if the

(*f*) Act of 1919, s. 8 (2) (*e*); 2 Statutes 1182.

(*h*) Act of 1845, s. 121; 2 Statutes 1156.

(*k*) *Ibid.*, ss. 22, 24; *ibid.*, 1121, 1122.

(*m*) *Ibid.*, ss. 38—57; *ibid.*, 1126—1132.

(*n*) *Ibid.*, s. 23; *ibid.*, 1121. Where a railway company are the undertakers, the compensation may, at the request of either party, be determined in the High Court. Regulation of Railways Act, 1868, ss. 41—43; 14 Statutes 186.

(*o*) Act of 1845, s. 68; 2 Statutes 1134.

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(*g*) See *ante*, p. 410.

(*i*) *Ibid.*, s. 68; *ibid.*, 1134.

(*l*) *Ibid.*, s. 68; *ibid.*, 1134.

property taken is subject to restrictions arising under covenants or otherwise (*p*).

Where an Act incorporates the Lands Clauses Acts, except the provisions which relate to the purchase and taking of lands otherwise than by agreement (*q*), the whole of the sections under that heading, including sect. 68, are excluded from the operation of the special Act, and on a purchase of land under that Act, any person entitled to the benefit of restrictions affecting the land may have recourse to the ordinary remedies to prevent a breach of covenant (*r*), unless the covenants are discharged on application to the authority under sect. 84 of the Law of Property Act, 1925 (*s*). If, however, the special Act does not specifically except the above-mentioned provisions, or if it merely excepts in general terms so much of the Lands Clauses Acts as relate exclusively to the purchase and taking of lands by compulsion, then sect. 68 is not excluded, and any person entitled to the benefit of restrictions affecting land taken under the powers conferred by the special Act has recourse only to the remedy given to him by that section (*t*).

If an Act incorporates the provisions of the Lands Clauses Acts with a proviso that the compulsory provisions shall not be exercised unless a compulsory purchase order is obtained, it has been held that the provisions of sect. 68 which relate to injurious affection apply even though land is acquired by agreement and no compulsory order has been obtained (*u*). [957]

As the proceedings under sect. 68 (*a*) are initiated by the claimant, and it is the claimant who gives notice for a jury if he selects that tribunal, the undertakers may make their offer, or an amended offer, of compensation at any time before notice of the inquiry is given (*b*) and the provisions of sect. 38 do not apply (*c*). In general, however, the earlier relevant sections of the Act apply, including the provisions as to costs of the inquiry (*d*). [958]

Assessment by Justices.—An application to the justices may be made by either party (*e*). If either party so applies a justice may

(*p*) Where land taken is subject to restrictions affecting its use, the local authority or other undertakers should consider whether application for a discharge or modification thereof should be made under s. 84 of the Law of Property Act, 1925; 15 Statutes 260, as amended by the Administration of Justice Act, 1932, s. 6; 25 Statutes 542; or whether the person having the benefit of the covenant should be left to claim damages under the Act of 1845. See title RESTRICTIVE COVENANTS.

(*q*) Ss. 16 to 68 of the Act of 1845, *supra*, bearing the heading "and with respect to the purchase and taking of lands otherwise than by agreement."

(*r*) *Ferrar v. London Sewers Commissioners* (1869), L. R. 4 Exch. 227; 11 Digest 134, 211; *Dungey v. London Corpn.* (1869), 38 L. J. (C. P.) 298; 38 Digest 24, 131; *Baker v. St. Marylebone Vestry* (1876), 35 L. T. 129; 11 Digest 134, 212.

(*s*) 15 Statutes 260, amended by 25 Statutes 542.

(*t*) *Imperial Gas Light and Coke Co. v. Broadbent* (1859), 7 H. L. Cas. 600; 11 Digest 133, 203; *Wright v. Air Council (President)* (1929), 143 L. T. 43; Digest (Supp.).

(*u*) *Clark v. London School Board* (1874), 9 Ch. App. 120; 11 Digest 137, 233; *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437; 11 Digest 145, 297. These cases were decided under the Elementary Education Act, 1870, s. 20, which is re-enacted by the Education Act, 1921, s. 111; 7 Statutes 190.

(*a*) 2 Statutes 1134.

(*b*) Act of 1845, s. 46; 2 Statutes 1128; *Re Hayward and Metropolitan Rail. Co.* (1864), 4 B. & S. 787; 11 Digest 203, 324; but see *Balls v. Metropolitan Board of Works* (1866), L. R. 1 Q. B. 387; 11 Digest 210, 933.

(*c*) Act of 1845; 2 Statutes 1126.

(*d*) *Ibid.*, s. 51; *ibid.*, 1129.

(*e*) *Ibid.*, s. 24; *ibid.*, 1122.

summon the other party to appear before two justices at a time and place to be named in the summons when the question will be heard and determined. The summons is not issued on an information or complaint, but upon a mere application, and if the justices refuse to hear and determine the application they can be compelled to do so by mandamus (*f*) which must be obtained by motion in the King's Bench Division for a prerogative writ, for an action for mandamus does not lie against justices even though they should be consenting parties (*g*).

Although the Act of 1845 provides that a claim is to be determined by justices, the parties may nevertheless agree to arbitration (*h*). The duty of the justices is to hear and determine the question in dispute as to compensation, but it is not part of their duty to inquire into any question of title.

The justices have jurisdiction to hear and determine a question, although the application may have been made more than six months after the beginning of the period during which the claim could be made, and the provisions of the Summary Jurisdiction Act, 1848, relating to orders of justices for the payment of money do not apply (*i*).

The justices, in dealing with claims by tenants having a yearly or less interest, although they may not inquire into any question of title, have jurisdiction to inquire whether the claimant has been required to give up possession before the expiration of his term or interest (*k*), and whether the claim is in respect of an acquisition of land, and not merely for injurious affection (*l*) this being a condition precedent to the right to compensation in such cases.

It seems probable, though the point has never been definitely decided, that justices hearing applications under the Lands Clauses Act are not a court of summary jurisdiction (*m*) and the provisions of the Act of 1845 with regard to the summoning of witnesses will apply (*n*) though a case may be stated (*o*).

The justices have a right to award costs. The determination of the question by justices need not be in writing but may be oral (*p*).
[959]

Assessment by Jury.—Where a notice to treat has been given by the undertakers (*q*) for the purchase of land, and the land has not yet been taken, ten days' notice must be given by the undertakers to the owner before the warrant (*r*) for summoning a jury is issued to the sheriff, and the notice must contain a statement of the amount which the undertakers are willing to pay as compensation (*s*). The offer may

(*f*) *R. v. Kennedy*, [1893] 1 Q. B. 533, D. C. ; 21 Digest 140, 51.

(*g*) *Baxter v. L.C.C.* (1890), 63 L. T. 767, at p. 771 ; 30 Digest 148, 221.

(*h*) *Collins v. South Staffordshire Rail. Co.* (1851), 21 L. J. (Ex.) 247 ; 13 Digest 393, 1080.

(*i*) Summary Jurisdiction Act, 1848, s. 11 ; 11 Statutes 278 ; *R. v. Edwards* (1884), 13 Q. B. D. 586, C. A. ; 11 Digest 189, 691.

(*k*) Act of 1845, s. 121 ; *Great Northern and City Rail. Co. v. Tillett*, [1902] 1 K. B. 874 ; 11 Digest 281, 2094.

(*l*) *R. v. Middlesex (Sheriff)*, *Re Somers v. Metropolitan Rail. Co.* (1862), 31 L. J. (Q. B.) 261 ; 11 Digest 281, 2090.

(*m*) See *Boulter v. Kent Justices*, [1897] A. C. 556 ; 30 Digest 69, 548.

(*n*) Act of 1845, s. 143 ; 2 Statutes 1162.

(*o*) *Great Northern and City Rail. Co. v. Tillett*, *supra*.

(*p*) *R. v. Boyce Combe* (1863), 32 L. J. (M. C.) 67 ; 11 Digest 281, 2095.

(*q*) See title NOTICE TO TREAT.

(*r*) The document requiring the sheriff to summon a jury is, in the Act of 1845, termed indifferently a "warrant" and an "application."

(*s*) Act of 1845, s. 38 ; 2 Statutes 1126. For form of notice, see 9 Ency. Forms, p. 60.

be accepted by the owner at any time before the jury have given their verdict (*t*).

Before the warrant for a jury is issued, the owner may demand arbitration (*u*) or he may require the summoning of a special jury (*a*). If no such demand or request is made, the undertakers must issue a warrant for summoning a jury which may, at their option, be a common or a special jury, and they may be compelled by the claimant to do so (*b*). The warrant must be under seal if the undertakers are a corporation, otherwise it must be under the hands and seals of two or more of the undertakers (*c*).

The procedure is the same whether a common jury or a special jury is summoned (*d*).

Where the land has actually been taken, or if the claim is one for injurious affection and the claimant elects to have the same settled by a jury, the undertakers must, unless they are willing to pay the amount claimed, issue a warrant to the sheriff to summon a jury within twenty-one days after receipt of a notice from the claimant of his desire, which must also state the nature of the interest in respect of which he claims, and the compensation claimed. Failure on the part of the undertakers to issue a warrant within the time limited renders them liable to pay the compensation claimed, which may be recovered, with costs, by action in the High Court (*e*).

If the sheriff is interested in the matter in dispute, the warrant is to be issued to a coroner of the county, and if all the coroners are interested, then to a disinterested ex-sheriff or ex-coroner of the county, who is residing there, preference being given to the one who has most recently held office (*f*).

If the warrant is issued to the sheriff he may delegate his duties to his under-sheriff (*g*); if it is issued to an ex-sheriff or an ex-coroner, he may appoint a deputy or assessor (*h*).

If the warrant is duly issued to a person other than the sheriff, the latter must, on application, deliver to him, or to a person appointed by him, the jury list of the county (*i*).

Unless a special jury is required, the person receiving the warrant, or other person lawfully acting in his place, who is both in the Act of 1845 and hereinafter termed the sheriff (*k*), must summon a jury of twenty-four to meet not less than fourteen or more than twenty-one days after receipt of the warrant at a time and place appointed by him. The place must be within eight miles of the lands in question unless the parties consent to a waiver of this condition. The sheriff must give notice to the promoters of the time and place appointed (*l*).

A jury of twelve is to be drawn, following the procedure of the High Court, and if sufficient jurymen do not appear the sheriff may return other

(*t*) *R. v. Westminster (High Bailiff), Ex parte L.C.C.*, [1903] 2 K. B. 189, D. C.; 11 Digest 207, 871.

(*u*) Act of 1845, s. 23; 2 Statutes 1121. For form of notice, see 9 Ency. Forms, p. 50.

(*a*) *Ibid.*, s. 54; *ibid.*, 1131. For form of warrant for special jury, see 9 Ency. Forms, p. 61.

(*b*) *R. v. Birmingham and Oxford Junction Rail. Co.* (1851), 15 Q. B. 634, Ex. Ch.; 11 Digest 170, 482.

(*c*) Act of 1845, s. 39; 2 Statutes 1126.

(*d*) *Ibid.*, s. 55; *ibid.*, 1131.

(*f*) *Ibid.*, s. 39; *ibid.*, 1126.

(*h*) *Ibid.*, s. 39; *ibid.*, 1126.

(*k*) *Ibid.*, s. 40; *ibid.*, 1127.

(*e*) *Ibid.*, s. 68; *ibid.*, 1134.

(*g*) *Ibid.*, s. 8; *ibid.*, 1113.

(*i*) *Ibid.*, s. 40; *ibid.*, 1127.

(*l*) *Ibid.*, s. 41; *ibid.*

indifferent men, duly qualified, of the bystanders or others that can be speedily procured. The parties may challenge jurymen, but may not challenge the array (*m*), and cannot, where no challenge has been made, question the validity of the verdict on the ground of a lack of qualification in jurymen (*n*).

If a special jury is required, the sheriff must summon the parties to appear before him, not less than five or more than eight days from the service of the summons (*o*), and at the time and place appointed the sheriff nominates a jury, which within eight days is to be reduced by him to the number of twenty, after appointing a time and place for the purpose and giving four days' notice to the parties (*p*).

The special jury consists of the first twelve of the said twenty who appear, on their names being called, subject to challenge. If a full jury do not appear, or if after challenges a full jury do not remain, the sheriff at the request of either party is to add to the jury list the names of any other disinterested persons qualified to act as special or common jurors, not previously struck off the list, who are in court or can be speedily procured, and these, subject to challenge, complete the jury (*q*).

Irregularities of procedure in summoning a jury do not vitiate subsequent proceedings (*r*).

Ten days' notice of the time and place of the inquiry is to be given by the undertakers to the other party (*s*).

The sheriff must preside at the inquiry by common or special jury (*t*), and in all the proceedings must observe the terms of the warrant (*u*). It is his duty to administer the oath to jurymen and witnesses, and at the request of either party, to summon before him persons considered necessary as witnesses, and at the like request to order a view by the jury or any six or more of them (*a*).

If the sheriff neglects to perform his duty he is liable to a forfeit of £50 recoverable by the undertakers by action in the High Court (*b*), but such neglect does not invalidate the warrant (*c*) and the sheriff may be compelled by mandamus to execute the same (*d*). If a jurymen does not appear, or refuses to take the oath (*e*) or otherwise neglects his duty without reasonable excuse, he is to forfeit a sum not exceeding £10 and to be subject to the same pains and penalties as if the jury had been returned for a trial in the High Court. Sums forfeited by a sheriff or a jurymen are to be applied towards the cost of the inquiry (*f*).

(*m*) Act of 1845, s. 42; 2 Statutes 1127.

(*n*) *Cooling v. Great Northern Rail. Co.* (1850), 15 Q. B. 486; 30 Digest 243, 414; *Re Chelsea Waterworks Co., Ex parte Phillips* (1855), 10 Exch. 731; 11 Digest 207, 867.

(*o*) For form of summons, see 9 Ency. Forms, p. 62.

(*p*) Act of 1845, s. 54; 2 Statutes 1131.

(*q*) *Ibid.*, s. 55; *ibid.*

(*r*) *Re Gloucestershire (Sheriff), Ex parte Great Western Rail. Co.* (1851), 18 L. T. (o. s.) 92; 11 Digest 207, 868.

(*s*) Act of 1845, s. 46; 2 Statutes 1128. For form of notice, see 9 Ency. Forms, p. 63.

(*t*) *Ibid.*, ss. 43, 55; *ibid.*, 1127, 1131.

(*u*) *Abrahams v. London Corpn.* (1868), L. R. 6 Eq. 626; 11 Digest 297, 2291.

(*a*) Act of 1845, ss. 43, 48; 2 Statutes 1127, 1128.

(*b*) *Ibid.*, s. 44; *ibid.*, 1128.

(*c*) *Horrocks v. Metropolitan Rail. Co.* (1863), 4 B. & S. 315; 11 Digest 207, 863.

(*d*) *Walker v. London and Blackwall Rail. Co.* (1842), 3 Q. B. 744; 11 Digest 207, 869.

(*e*) A juror may affirm instead of taking an oath (Oaths Act, 1888, s. 1; 8 Statutes 241).

(*f*) Act of 1845, s. 44; 2 Statutes 1128.

Witnesses, who without sufficient cause fail to appear or refuse to be examined on oath, are liable to a forfeit not exceeding £10 to the party aggrieved (g), which is recoverable summarily (h).

Sect. 49 of the Act of 1845 provides that where an injury relates to the value of lands taken and to injury by severance or otherwise of lands held therewith the jury are to deliver their verdict separately for each part of the claim (i). This requirement has, however, been held to be directory only, and unless either party requires separate assessments to be made a verdict for a lump sum is valid (k). A jury may find no damage (l) or may award more than the amount claimed, in respect of any particular item, though it is doubtful whether they may make an award of which the total is greater than the total amount claimed (m).

After the verdict is found, the sheriff is to give judgment for the purchase money or compensation found by the jury. The judgment should recite the relevant facts showing the jurisdiction of the tribunal (n) and should be signed by the sheriff and deposited with the clerk of the peace. All persons have the right to inspect the judgment and to bespeak certified copies on payment of the proper charges (o).

A judgment is enforceable by action and not as a judgment of the court. It can be set aside on the ground of excess of jurisdiction, but not for any irregularity of procedure. If there has been an excess of jurisdiction, the award can be removed into the High Court by *certiorari*, if application is made without undue delay (p). [960]

Assessment by Arbitration.—If a question of disputed compensation is to be settled by arbitration, the parties should endeavour in the first place to agree upon a single arbitrator (q). It is, however, open to parties to agree to a method of determination of compensation otherwise than by arbitration in strict accordance with the provisions of the Act of 1845 (r). They may also by agreement refer matters, other than the compensation payable, to an arbitrator appointed in accordance with the provisions of that Act (s).

The parties are not bound to agree to the appointment of a single

(g) Act of 1845, s. 45 ; 2 Statutes 1128.

(h) *Ibid.*, s. 136 ; 2 Statutes 1161.

(i) *Ibid.*, 1128. For form of verdict of jury, see 9 Ency. Forms, p. 64.

(k) *Re London and Greenwich Rail. Co.* (1835), 2 Ad. & El. 678 ; 11 Digest 207, 873 ; *Corrigal v. London and Blackwall Rail. Co.* (1843), 5 Man. & G. 219 ; 11 Digest 204, 832.

(l) *R. v. Lancaster and Preston Junction Rail. Co.* (1845), 6 Q. B. 759 ; 11 Digest 185, 653.

(m) *Robertson v. City and South London Rail. Co.* (1904), 68 J. P. 280 ; 11 Digest 207, 872.

(n) *R. v. Manchester and Leeds Rail. Co.* (1838), 8 Ad. & El. 413 ; 11 Digest 209, 902.

(o) Act of 1845, s. 50 ; 2 Statutes 1129. The provisions of this section as to signing and recording the judgment do not appear to be essential to its validity. See *Manning v. Eastern Counties Rail. Co.* (1843), 12 M. & W. 237 ; 22 Digest 310, 3020 ; *Chabot v. Morpeth (Lord)* (1850), 15 Q. B. 446 ; 11 Digest 208, 894.

(p) *R. v. Sheward* (1880), 9 Q. B. D. 741, C. A. ; 16 Digest 462, 3363.

(q) Act of 1845, s. 25 ; 2 Statutes 1122. For form of appointment of sole arbitrator by agreement, see 9 Ency. Forms, p. 51.

(r) *Eagle v. Charing Cross Rail. Co.* (1867), 36 L. J. (C. P.) 297 ; 11 Digest 144, 286.

(s) *Collins v. South Staffordshire Rail. Co.* (1851), 21 L. J. (Ex.) 247 ; 10 Digest 1177, 8357 ; *Martin v. Leicester Waterworks Co.* (1858), 27 L. J. (Ex.) 432 ; 11 Digest 202, 815.

arbitrator, and if they do not do so (t), then each party on the request of the other must nominate and appoint an arbitrator to whom the dispute is referred (u). The appointment of an arbitrator on the part of the promoters is to be under the hands of the promoters, or any two of them, or their secretary or clerk, and on the part of any other party under hand, or if such party be a corpn. aggregate, under common seal (a).

The fact of the appointment of an arbitrator must be communicated to the other party and the appointment is not completed until this is done (b).

When his appointment has been delivered to the arbitrator, it is deemed to be a submission to arbitration by the party by whom the appointment is made, and after an appointment is completed, neither party has power to revoke it without the consent of the other, and the death of either party does not operate as a revocation. If for fourteen days after a dispute as to compensation has arisen, and after request has been served by one party upon the other to appoint an arbitrator, such other party fails so to appoint, the party making the request and having himself appointed an arbitrator may appoint that arbitrator to act on behalf of both parties (c), and such arbitrator may hear and determine the matters in dispute and his award will be final (d). A sole arbitrator so appointed to act for both parties must in the first instance have been appointed an arbitrator, and his appointment duly notified to the other side, otherwise his subsequent appointment is of no effect (e).

In practice, it is usual for each party to appoint an arbitrator who is not in fact impartial, but openly advocates and presses the claims of the party who has appointed him. This has been the subject of judicial disapprobation.

A submission to arbitration is a submission within the meaning of the Arbitration Act, 1889 (f), and that Act applies to arbitrations under the Lands Clauses Acts, except so far as it is inconsistent therewith (g).

A submission to arbitration may be made a rule of any of the superior courts on the application of either party (h). In any event it has the same effect as if it had been made an order of the court (i).

Before an arbitrator enters on a consideration of the matters referred to him, he must make a declaration in the presence of a justice of the peace to the following effect :

(t) Failure to endeavour to agree upon the appointment of an arbitrator may in some circumstances affect the right to costs. *Yates v. Blackburn Corpn.* (1860), 29 L. J. (Ex.) 447 ; 11 Digest 190, 700.

(u) For form of appointment of arbitrator, see 9 Ency. Forms, p. 51, and for form of appointment under protest, where the promoter disputes the claimant's right to compensation, see *ibid.*, p. 52.

(a) Act of 1845, s. 25 ; 2 Statutes 1122.

(b) *Tew (Dew) v. Harris* (1847), 11 Q. B. 7 ; 2 Digest 402, 589. For form of notice of appointment of arbitrator, see 9 Ency. Forms, p. 55.

(c) For forms of appointment of sole arbitrator where one party has failed to appoint, see *ibid.*, p. 53.

(d) Act of 1845, s. 25 ; 2 Statutes 1122.

(e) *Bradley v. London and North Western Rail. Co.* (1850), 5 Exch. 769 ; 11 Digest 190, 699.

(f) Arbitration Act, 1889 ; 1 Statutes 453. The Arbitration Act, 1889, has been amended by the Arbitration Act, 1934, 24 & 25 Geo. 5, c. 14 ; 27 Statutes 27.

(g) Arbitration Act, 1889, s. 24 ; 1 Statutes 464 ; and see title ARBITRATION.

(h) Act of 1845, s. 36 ; 2 Statutes 1125.

(i) Arbitration Act, 1889, s. 1 ; 1 Statutes 453 ; and see note (f), *supra*.

"I, A. B., do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under the provisions of the . . . Act (name the special Act).

"Made and subscribed in the presence of

"A. B.

and this declaration is to be annexed to the award when made, and if an arbitrator having made such declaration wilfully acts contrary thereto, he is guilty of a misdemeanor (*k*).

The justice before whom the declaration is taken need not be one having jurisdiction where the lands are situate (*l*).

Failure to make or to annex the declaration may render the award invalid unless the parties waive the informality (*m*), but a party is not entitled to await the issue of the award and then raise a question of informality, after ascertaining that the award is not satisfactory to him.

If when both arbitrators have been appointed either of them refuses or for seven days neglects to act, the other of them may proceed *ex parte*, and his decision is as effectual as if he had been appointed sole arbitrator by both parties (*n*).

If an arbitrator dies or becomes incapable of acting before the determination of the matters referred to him, the party who appointed him may appoint another person to act in his place, and if that party fails for seven days, after notice from the other party, to appoint, the surviving or remaining arbitrator may proceed *ex parte* (*o*).

Where two arbitrators have been appointed, it is essential, before they enter upon the reference, to appoint in writing under their hands an umpire to decide on any matters on which the arbitrators shall differ, or which are referred to him under the Lands Clauses Acts or the special Act, and if the umpire dies or becomes incapable of acting, the arbitrators must appoint another in his place. The decision of the umpire on matters referred to him is final (*p*).

If the arbitrators refuse or after seven days' notice by either party neglect to appoint an umpire, the Board of Trade must on the application of either party appoint an umpire (*q*). The umpire must make a declaration before entering on the arbitration in the same form as that required to be made by an arbitrator (*r*).

Arbitrators must make their award within twenty-one days of the appointment of the second arbitrator or within such extended time, not exceeding in all three months, as in writing under their hands they have agreed; otherwise the matters referred to them are to be determined by the umpire (*s*). They may, however, appoint an umpire after the expiration of the twenty-one days or the extended period. The

(*k*) Act of 1845, s. 33; 2 Statutes 1125.

(*l*) *Davies v. South Staffordshire Rail. Co.* (1851), 21 L. J. (M. C.) 52; 11 Digest 192, 717.

(*m*) *Ludlow Corpn. v. Prosser* (1906), 70 J. P. 400; 38 Digest 175, 175.

(*n*) Act of 1845, s. 30; 2 Statutes 1124.

(*o*) *Ibid.*, s. 26; *ibid.*, 1123. For form of appointment of substituted arbitrator, see 9 Ency. Forms, p. 54.

(*p*) *Ibid.*, s. 27; *ibid.* For form of appointment of umpire, see 9 Ency. Forms, p. 56.

(*q*) *Ibid.*, s. 38; *ibid.*, 1126.

(*r*) See *supra*.

(*s*) Act of 1845, ss. 23, 31; 2 Statutes 1121, 1124.

umpire must make his award within three months from the date of his appointment (*t*).

The statutory provisions as to the time of making an award may, however, be varied by agreement between the parties (*u*).

It is not necessary that there should be a formal hearing or taking of evidence, or inspection of documents, and in some cases where expert surveyors or valuers constitute the tribunal this becomes unnecessary (*a*). The arbitrators and umpire may, however, call for production of relevant documents in the possession or power of either party (*b*), and may examine the parties or their witnesses on oath, and may administer the necessary oaths (*c*). Evidence can be taken without oath if the parties consent (*d*).

The award is to be delivered to the undertakers by the arbitrators or the umpire on payment of their reasonable charges (*e*), and the claimants may compel the undertakers to take up the award by mandamus on an application for a prerogative writ (*f*). The validity of the award may be contested later.

The claimant is not authorised to take up the award, and if he does so he cannot recover the money paid to the umpire or arbitrators, and the decision of the taxing master disallowing the sum so paid as costs in an arbitration is not subject to review by the court (*g*).

The undertakers must retain the award, but must supply a copy thereof to the claimant and at all times produce the award and allow it to be inspected by the claimant or his agents (*h*).

An arbitration being subject to the provisions of the Arbitration Act, 1889, in so far as they are not in conflict with the provisions of the Lands Clauses Acts and the special Act (*i*), a special case on any question of law may be stated by the arbitrators or umpire at any stage of the proceedings, for the opinion of the High Court, or the award may be made in the form of a special case (*k*).

An award may be remitted or set aside in the same way and on the same grounds as other awards, but may not be set aside merely for irregularity or error in matter of form (*l*).

An award may be enforced by either party within six years from the date thereof (*m*) by action for specific performance (*n*). It may also be

(*t*) *Re Bradshaw and East and West India Docks and Birmingham Junction Rail. Co.* (1848), 12 Q. B. 562; 11 Digest 191, 709; *Skerratt v. North Staffordshire Rail. Co.* (1848), 2 Ph. 475; 11 Digest 191, 708.

(*u*) *R. v. Manley-Smith* (1893), 63 L. J. (Q. B.) 171; 11 Digest 191, 707.

(*a*) *Bottomley v. Ambler* (1877), 38 L. T. 545; 2 Digest 321, 65.

(*b*) Including a provisional agreement not carried out. *Percival v. Peterborough Corpn.*, [1921] 1 K. B. 414; 11 Digest 128, 173 (an arbitration under the Act of 1919).

(*c*) Act of 1845, s. 32; 2 Statutes 1124.

(*d*) *Wakefield v. Llanelly Rail. and Dock Co.* (1865), 12 L. T. 509; 11 Digest 193, 721.

(*e*) Act of 1845, s. 35. For form of award, see 9 Ency. Forms, p. 58.

(*f*) *R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512; 16 Digest 295, 1083; *London and North Western Rail. Co. v. Walker*, [1900] A. C. 109, P. C.; 11 Digest 195, 749.

(*g*) *Shrewsbury (Earl) v. Wirral Railways Committee*, [1895] 2 Ch. 812, C. A.; 11 Digest 199, 787.

(*h*) Act of 1845, s. 35; 2 Statutes 1125.

(*i*) Arbitration Act, 1889, s. 24; 1 Statutes 464. The Arbitration Act, 1889, has been amended by the Arbitration Act, 1934, 24 & 25 Geo. 5, c. 14; 27 Statutes 27.

(*k*) See title ARBITRATION, Vol. I., p. 399.

(*l*) Act of 1845, s. 37; 2 Statutes 1126; *Re Harper and Great Eastern Rail. Co.* (1875), L. R. 20 Eq. 39; 11 Digest 197, 761.

(*m*) *Turner v. Midland Rail. Co.*, [1911] 1 K. B. 832, D. C.; 32 Digest 327, 133.

(*n*) *Harding v. Metropolitan Rail. Co.* (1872), 7 Ch. App. 154, L. C.; 11 Digest 197, 762.

enforced by the undertakers by the execution of a deed poll by them, after deposit in the Bank of England of the amount awarded, and thereupon, against the parties for whose use the money is so deposited, the land vests absolutely in the undertakers, with a right to immediate possession (o). [961]

XII. ENTRY ON LANDS BEFORE PURCHASE

Statutory undertakers may not enter on lands which they are authorised to purchase compulsorily before completion of the purchase, unless they have obtained the consent of the owner and occupier, or paid the purchase money or compensation to the parties interested, or deposited the same in the bank in the manner provided by the Lands Clauses Acts, or unless they have complied with the special conditions with respect to entry on lands contained in the Lands Clauses Consolidation Act, 1845 (p), which makes provision (i.) for entry for temporary purposes, and (ii.) for entry and user for the purpose of the undertaking.

If the promoters desire to enter on the lands in order to make surveys, or to make borings to ascertain the nature of the soil, or to set out the line of the works, they may do so on giving the owner and occupier notice of their intention to enter for such a purpose, not less than three days or more than fourteen days before entering. If notice is so given, no consent of the owner or occupier is necessary, but compensation must be paid for any damage occasioned to the owner or occupier (q). [962]

If the promoters desire to enter on and use the lands (r) before agreement is achieved (s) or award made or verdict given for the purchase money and compensation for any interest therein, they may do so with the consent of the owner of such interest, or without consent after depositing security in manner provided by the Act (t). If entry is made by consent, that of the owner as well as that of the occupying tenant must be obtained (u). Consent once given cannot be withdrawn (a)

(o) Act of 1845, ss. 76, 77; 2 Statutes 1138, 1139.

(p) *Ibid.*, ss. 84—88; *ibid.*, 1142—1144. The necessity for compliance with these provisions has been dispensed with in some cases; see Land Settlement (Facilities) Act, 1919, s. 2; 1 Statutes 288; Unemployment (Relief Works) Act, 1920, s. 2; 20 Statutes 653; Housing Act, 1925, s. 106; 13 Statutes 1060, as amended by the Housing Act, 1930, Sched. V.

(q) Act of 1845, s. 84; 2 Statutes 1142. Where promoters entered to survey without giving notice, but undertook not to proceed further without observing the due formalities, an injunction was refused. *Fooks v. Wilts, Somerset and Weymouth Rail. Co.* (1846), 5 Hare, 199; 11 Digest 214, 981.

(r) The diversion of a stream for the purposes of a water undertaking is equivalent to entry and user. Waterworks Clauses Act, 1847, s. 6; 20 Statutes 188; *Ferrand v. Bradford Corpn.* (1856), 27 L. T. (o. s.) 11; 11 Digest 218, 1030. Interference with an easement over the land taken is not an entry. *Clark v. London School Board* (1874), 9 Ch. App. 120; 11 Digest 137, 233.

(s) If the compensation has been fixed by agreement, the statutory power of entry is not available. *Bygrave v. Metropolitan Board of Works* (1886), 32 Ch. D. 147; 11 Digest 227, 1139.

(t) If land is in possession of a receiver, the consent of the court is necessary before proceedings are taken. *Tink v. Rundle* (1847), 10 Beav. 318; 39 Digest 59, 704.

(u) *Armstrongs v. Waterford and Limerick Rail. Co.* (1846), 8 L. T. (o. s.) 199; 11 Digest 217, 1013.

(a) *Doe d. Hudson v. Leeds and Bradford Rail. Co.* (1851), 16 Q. B. 796; 11 Digest 217, 1016; *Knapp v. London, Chatham and Dover Rail. Co.* (1863), 32 L. J. (Ex.) 236; 11 Digest 217, 1017.

and acquiescence may amount to consent (b), or consent may be inferred if negotiations take place after entry (c). Delay in applying for an injunction to restrain the undertakers from continuing in possession may be considered as acquiescence (d), but delay for a short time in making such an application cannot be so considered (e). The security must be deposited in the Bank of England, and the undertakers must give to the owners of interests in the land a bond with two sureties in a penal sum equal to the sum deposited (f). The amount to be deposited is the amount of the claim made by the owner or the person entitled to sell the interest in question, or a sum determined by a surveyor appointed by two justices on the application of the promoters (g), and the surveyor appointed may be a valuer in the employ of the promoters (h). No notice of the application to the justices need be given to the owner (i). [963]

In taking steps to obtain power to enter on and use land without the owner's consent, it is important, especially in view of the fact that the proceedings are *ex parte*, that the provisions of the Act of 1845 should be strictly observed, and unless there is full compliance with the terms of that Act, the promoters will not obtain the protection of the statute, and entry on the lands will constitute a trespass. If the action of the promoters is challenged, it is generally incumbent upon them to show satisfactorily and clearly that they have fulfilled the conditions of sect. 85 of the Act, and have complied with its requirements. If there is room for doubt, the owner is to have the benefit of the doubt (k).

Proceedings for entry and user are not an exercise of compulsory powers of purchase, but are steps for carrying the purchase into

(b) *Greenhalgh v. Manchester and Birmingham Rail. Co.* (1838), 8 L. J. (Ch.) 75; 11 Digest 218, 1018.

(c) *Tower v. Eastern Counties Rail. Co.* (1843), 3 Ry. & Can. Cas. 374; 11 Digest 218, 1019. See also *Cooke v. L.C.C.*, [1911] 1 Ch. 604; 11 Digest 173, 503, where notice to treat to mortgagee was held to be valid after possession taken as against mortgagor.

(d) *Hopkins v. Great Northern Rail. Co.* (1848), 11 L. T. (o. s.) 306; 21 Digest 350, 1338; and see *Somersetshire Coal Canal Co., Ltd. v. Harcourt* (1858), 27 L. J. (Ch.) 625; 11 Digest 165, 436.

(e) *Murray v. London and Blackwall Rail. Co.* (1851), 18 L. T. (o. s.) 235; 11 Digest 218, 1021.

(f) Act of 1845, s. 85; 2 Statutes 1142. By para. 1 of the modifications in the Sixth Schedule to the L.G.A., 1933, and by many local Acts the condition in s. 85 as to the provision of sureties is excepted from incorporation.

(g) Act of 1845, s. 85; 2 Statutes 1142. The section provides that the appointment is to be made in manner provided by the Act in the case of parties who cannot be found, as to which see s. 59; 2 Statutes 1132.

In the case of railway companies, unless otherwise provided by the special Act, the application must be made by the company to the Minister of Transport, after not less than seven days' notice of intention to make the application has been given to the owner of the interest in the land sought to be affected by the proceedings. Railway Companies Act, 1867, s. 36; 14 Statutes 175; Ministry of Transport Act, 1919, s. 2; 3 Statutes 422. For forms of notice of intention to apply to the Minister of Transport for the appointment of a surveyor, and request by railway company to appoint, see 9 Ency. Forms, p. 47.

(h) *Langham v. Great Northern Rail. Co.* (1848), 16 L. J. (Ch.) 437; 11 Digest 220, 1048.

(i) *Bridges v. Wilts, Somerset and Weymouth Rail. Co.* (1847), 16 L. J. (Ch.) 335; 11 Digest 219, 1034, a decision which was doubted but followed by KNIGHT BRUCE, V.C., in *Langham v. Great Northern Rail. Co.*, *supra*, at p. 440. As to applications by railway companies since 1867, see penultimate footnote.

(k) *Barker v. North Staffordshire Rail. Co.* (1848), 10 L. T. (o. s.) 390; 11 L. T. (o. s.) 43, 345, 451; 11 Digest 220, 1043.

effect (*l*). The object of the provisions is to give promoters a right of immediate entry, but not to vest in them the ownership of the land. The owner therefore retains a lien, not only for the value of the land, but for compensation for damages (*m*).

The service of a notice to treat would appear to be necessary before proceedings are taken to enter (*n*) though there is some doubt as to the necessity for this. No right of entry can arise before the extent of the land to be taken has been fixed, and a legal obligation to take and pay for the same has been created (*o*).

If entry has been made on lands before the end of the period limited for compulsory purchase, the promoters may continue in possession after the expiration of that period although the purchase has not been completed (*p*), and if notice to treat is served before the expiration of their compulsory powers, promoters may enter after those powers have expired (*q*).

Delay in ascertaining the amount of compensation to be paid is not a ground on which proceedings for entry and user can be resisted (*r*), nor is it necessary that there should be urgent necessity for immediate entry (*s*).

Where promoters have unintentionally omitted to deal with an interest in land before entry, and there has been no failure of diligence on their part in ascertaining the owners, possession will not be interfered with if they give proper security for payment of compensation (*t*), and where before entry there has been an informality in procedure which is subsequently corrected by the promoters, they may rightfully continue in possession (*u*). [964]

Promoters cannot enter on part only of the land in respect of which they have given notice to treat, on making a deposit and giving security for such part only (*a*); nor can they enter on part only of a house or other building or manufactory where they have given notice to treat for that part only, if the owner has given a counter notice requiring that the whole of the premises shall be taken (*b*), unless they have first made the necessary deposit and given the necessary security in respect

(*l*) *Salisbury (Marquis) v. Great Northern Rail. Co.* (1852), 17 Q. B. 840; 11 Digest 219, 1039; *Great Western Rail. Co. v. Swindon and Cheltenham Rail. Co.* (1884), 9 App. Cas. 787; 11 Digest 106, 36.

(*m*) *Wing v. Tottenham and Hampstead Junction Rail. Co.* (1868), 3 Ch. App. 740; 11 Digest 220, 1041; *Walker v. Ware, Hadham and Buntingford Rail. Co.* (1865), L. R. 1 Eq. 195; 11 Digest 230, 1177.

(*n*) *Ford v. Plymouth, Devonport and South Western Junction Rail. Co.* [1887], W. N. 201.

(*o*) *Tiverton and North Devon Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480; 11 Digest 219, 1035; but see *Bush v. Trowbridge Waterworks Co.* (1875), 10 Ch. App. 459.

(*p*) *Doe d. Armitstead v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 526; 11 Digest 219, 1036; *Worsley v. South Devon Rail. Co.* (1851), 16 Q. B. 539; 11 Digest 219, 1037.

(*q*) *Tiverton and North Devon Rail. Co. v. Loosemore*, *supra*.

(*r*) *Willey v. South Eastern Rail. Co.* (1849), 18 L. J. (Ch.) 201; 11 Digest 218, 1026.

(*s*) *Tiverton and North Devon Rail. Co. v. Loosemore*, *supra*; disapproving *Field v. Carnarvon and Llanberis Rail. Co.* (1867), L. R. 5 Eq. 190; 11 Digest 219, 1031.

(*t*) *Alston v. Eastern Counties Rail. Co.* (1855), 26 L. T. (o. s.) 51; 11 Digest 218, 1029.

(*u*) *Willey v. South Eastern Rail. Co.*, *supra*.

(*a*) *Barker v. North Staffordshire Rail. Co.* (1848), 2 De G. & Sm. 55; 11 Digest 220, 1043.

(*b*) Act of 1845, s. 92; 2 Statutes 1145; L.G.A. Act, 1933, Sched. VI.; 26 Statutes 508.

of the whole of the premises (c), though if the counter notice given by the owner is not good, they can lawfully enter on making a deposit and giving security only in respect of the part of the premises for which they have given notice to treat (d). [965]

Where express power to take an easement is given by the special Act the promoters are entitled to enter after compliance with the statutory requirements, taking into consideration the assessed value of the easement only, although a counter notice may have been given requiring them to take the whole of the land (e). [966]

If a surveyor is appointed to make a valuation, he must take into consideration not only the value of the land, but the damage (if any) to be caused by severance (f) and injurious affection, and must include fixtures and trade fixtures (g). A valuation purporting to have taken the whole matter into consideration will not be interfered with by the courts (h). [967]

The sum to be deposited must be paid into the Bank of England in the name and with the privity of the Accountant-General of the Supreme Court (i), to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands (k), subject to the control and disposition of the court, and the cashier of the bank must give to the persons paying in the money a receipt specifying for what purpose and to whose credit it is paid in (l). Where the compensation determined to be payable exceeded the sum deposited, the court has ordered the difference to be paid into court (m).

The money is to remain in the bank as security for performance of the conditions of the bond, but may be ordered to be invested on the petition or summons of the promoters and accumulated (n).

If the condition of the bond is performed, the money and accumulations may be paid out to the undertakers on a summons, however large the amount may be (o).

(c) *Giles v. London, Chatham and Dover Rail. Co.* (1861), 30 L. J. (Ch.) 603; 11 Digest 220, 1044; *Underwood v. Bedford and Cambridge Rail. Co.* (1861), 7 Jur. (N. S.) 941; 11 Digest 220, 1045; *Dadson v. East Kent Rail. Co.* (1859), 7 Jur. (N. S.) 941; 11 Digest 220, 1046.

(d) *Harvie v. South Devon Rail. Co.* (1874), 32 L. T. 1; 11 Digest 180, 576. A verbal counter notice may be good. *Binney v. Hammersmith and City Rail. Co.* (1863), 8 L. T. 161; 11 Digest 183, 634.

(e) *Ramsden v. Manchester, South Junction and Altrincham Rail. Co.* (1848), 1 Exch. 723; 26 Digest 326, 596; *Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143; 19 Digest 11, 13; and see *Farmer v. Waterloo and City Rail. Co.*, [1895] 1 Ch. 527; 11 Digest 119, 122.

(f) *Field v. Carnarvon and Llanberis Rail. Co.* (1867), L. R. 5 Eq. 190; 11 Digest 221, 1054.

(g) *Gibson v. Hammersmith and City Rail. Co.* (1863), 32 L. J. (Ch.) 337; 31 Digest 194, 3300.

(h) *River Roden Co., Ltd. v. Barking Town U.D.C.* (1902), 18 T. L. R. 608; 11 Digest 221, 1051. Where a surveyor never entered the premises valued, his valuation was held to be bad. *Cotter v. Metropolitan Rail. Co.* (1864), 10 L. T. 777; 11 Digest 221, 1050.

(i) Supreme Court of Judicature (Consolidation) Act, 1925, ss. 133, 135; 4 Statutes 183, 184.

(k) Payment to the credit of *ex parte* the promoters the account of the landowner has been held to be a proper payment. *Poynder v. Great Northern Rail. Co.* (1847), 16 L. J. (Ch.) 444; 11 Digest 220, 1049.

(l) Act of 1845, s. 86; 2 Statutes 1143.

(m) *Ex parte London, Tilbury and Southend Rail. Co.* (1853), 1 W. R. 533; 11 Digest 221, 1058; *Ashford v. London, Chatham and Dover Rail. Co.* (1866), 14 L. T. 787; 11 Digest 221, 1059.

(n) Act of 1845, s. 87; 2 Statutes 1143. As to the securities in which investment may be made, see R. S. C., Ord. 22, r. 17.

(o) Annual Practice, 1933, p. 1105.

On application for a payment out, an affidavit should be produced that a bond was given by the claimant and exhibiting it; that the compensation money and interest (if any) have been paid to the claimant or into court, and that the bond has been given up by claimant to the undertakers.

A summons asking for payment to a person on behalf of the undertakers should bear their seal (*p*) by analogy to the practice on petitions (*q*).

Service of a copy of the application on the landowner may be dispensed with if his consent is proved or obtained (*r*) or if a considerable time has elapsed after completion of purchase (*s*).

It is not necessary for promoters, having satisfied the condition of the bond, and showing that it has been returned to them, to prove that the purchase money has been paid to the persons really entitled to it, and any person other than the obligee who has an interest in the land is otherwise protected (*t*), nor is the making of an order for payment out dependent on the payment of the vendor's costs, for there is no lien for costs on the sum deposited (*u*).

The bond must be given under the common seal of the promoters, or if they are not a corpn., under the hands and seals of the promoters or of any two of them. The two sureties (*a*) must be approved by two justices in case the parties differ (*b*). The approval may be given without notice to the owner (*c*).

The bond should follow the wording of the statute, and should be for a penal sum equal to the sum deposited in the bank, conditioned for payment by the promoters or the sureties to the owner, or the deposit in the Bank of England for the benefit of the parties interested in the lands, as the case may require, of the purchase money or compensation determined to be payable by the promoters in respect of the lands entered upon, with interest at the rate of 5 per cent. per annum from the time of entering until payment or deposit in the bank (*d*). The

(*p*) *Ex parte London, Chatham and Dover Rail. Co.* (1860), 3 L. T. 237; 11 Digest 222, 1074.

(*q*) *Ex parte Maidstone and Ashford Rail. Co.* (1883), 25 Ch. D. 168; Digest, Practice 722, 3107.

(*r*) *Re Dyson, Ex parte Huddersfield Corpn.* (1882), 46 L. T. 730; 11 Digest 221, 1063. In *Re London and North Western Rail. Co.* (1872), 26 L. T. 687; 11 Digest 222, 1072, it was held that possession of the bond by the undertakers was sufficient evidence of compliance with the conditions thereof.

(*s*) *Ex parte Lancashire and Yorkshire Rail. Co.* (1886), 55 L. T. 53; 11 Digest 221, 1064 (notice served on official solicitor only).

(*t*) Act of 1845, s. 124; 2 Statutes 1157. *Ex parte Midland Rail. Co.*, [1904] 1 Ch. 61; 11 Digest 222, 1073.

(*u*) *Re London and South Western Rail. Extension Act, Ex parte Stevens* (1848), 13 L. T. (o. s.) 388; 11 Digest 222, 1069; 255, 1603; *Re Wimbledon and Dorking Rail. Act, 1857, Ex parte Wimbledon and Dorking Rail. Co.* (1863), 9 L. T. 703; 11 Digest 222, 1070; *Re Neath and Brecon Rail. Co.* (1874), 9 Ch. App. 263; 32 Digest 286, 645.

(*a*) The necessity for providing sureties is dispensed with by para. 1 of the modifications in the Sixth Schedule to the L.G.A., 1933, and by many local Acts.

(*b*) Act of 1845, s. 85; 2 Statutes 1142. In the case of promoters who are a railway company the sureties are to be approved, if the parties differ, by the Minister of Transport, after hearing the parties. Railway Companies Act, 1867, s. 36 (4); 14 Statutes 175.

(*c*) In the case of a railway company, the Minister of Transport may approve sureties on an *ex parte* application of the company unless the parties differ. *Tiverton and North Devon Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480; 11 Digest 219, 1035.

(*d*) Act of 1845, s. 85; 2 Statutes 1142. See *Willey v. South Eastern Rail. Co.*

bond need not specify with exactness the portion of land to be entered upon (e), although this is desirable.

A bond is irregular if conditioned for payment or deposit "on demand" (f) or "at any time hereafter" (g) or if given to owners jointly where they are tenants in common (h), or if it provides for payment or deposit in the bank "or otherwise" (i).

The claimant is entitled to a bond which does not put him into the position of having to consider whether a departure from the statutory form is of detriment to him or otherwise (k).

When entry has been made in pursuance of the foregoing provisions, disputed compensation is to be assessed in manner provided by the Acquisition of Land (Assessment of Compensation) Act, 1919, in cases to which that Act applies, and in all other cases is to be assessed by two justices if the claim does not exceed £50 (l), and, if the claim exceeds that amount, by arbitration or by a jury at the option of the claimant (m). It is not the duty of the undertakers to initiate proceedings; this duty falls on the owner (n).

If entry is made on land for a purpose which is *ultra vires* the undertakers are liable in damages (o). [968]

Entry can be made without compliance with the foregoing provisions in the case of lands acquired under the Unemployment (Relief Works) Act, 1920, the Housing Acts, 1925 and 1930, and the Public Works Facilities Act, 1930.

Under the Act of 1920 seven days' prior notice is necessary (p); under the Housing Acts 28 days' notice is required in the case of land purchased for the purposes of a scheme under Part II.; and 14 days in the case of land required under Part III. (q). Under the Public Works Facilities Act, 1930, 14 days' notice is required (r).

In each case interest upon the sum subsequently assessed as compensation is payable from the date of entry. [969]

XIII. PARTICULAR INTERESTS IN LAND

Mortgages.—When land taken by statutory undertakers is subject to mortgage, special powers are given to them for the purchase or

(1849), 18 L. J. (Ch.) 201; 11 Digest 218, 1026. For form of bond, see 9 Ency. Forms, p. 48.

(e) *Willey v. South Eastern Rail. Co.*, *supra*.

(f) *Poynder v. Great Northern Rail. Co.* (1847), 16 L. J. (Ch.) 444; 11 Digest 220, 1049; *Langham v. Great Northern Rail. Co.* (1848), 16 L. J. (Ch.) 437; 11 Digest 222, 1078.

(g) *Cotter v. Metropolitan Rail. Co.* (1864), 10 L. T. 777; 11 Digest 221, 1050.

(h) *Langham v. Great Northern Rail. Co.*, *supra*.

(i) *Hosking v. Phillips* (1848), 3 Exch. 168; 11 Digest 223, 1082.

(k) *Cotter v. Metropolitan Rail. Co.*, *supra*. A provision for payment to the owner, "his executors, administrators or assigns" is a condition which if not expressed might have been legally implied, and for that reason the insertion of the words was probably permissible. *Hosking v. Phillips*, *supra*; 11 Digest 223, 1083; but see *Daubney v. Manchester, Sheffield and Lincoln Rail. Co.* (1847), 10 L. T. (o. s.) 283; 11 Digest 223, 1095.

(l) Act of 1845, s. 22; 2 Statutes 1121.

(m) *Ibid.*, s. 68; *ibid.*, 1134.

(n) *Doe d. Armitstead v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 526; 11 Digest 224, 1098.

(o) *Batson v. London School Board* (1908), 67 J. P. 457; 19 Digest 573, 120.

(p) S. 2, Unemployment (Relief Works) Act, 1920; 20 Statutes 653.

(q) S. 106 (3), Housing Act, 1925; 13 Statutes 1060, as amended by s. 63 and Sched. V., Housing Act, 1930; 23 Statutes 436, 444.

(r) S. 2 (2), Public Works Facilities Act, 1930; 23 Statutes 773.

redemption of the interests of the mortgagee, whether entitled in his own right, or in trust for others, and whether he is in possession, by virtue of the mortgage, or not (*s*). The mortgagee should be served with a notice to treat (*t*) unless, as is usually the case, terms for the repayment of the mortgage debts are agreed. Notice to treat may be given to a mortgagee after such a notice has been given to the mortgagor, and after possession of the land has been taken (*u*).

The redemption may be effected before or after the purchase of the equity of redemption (*v*), or as is most usual, at the time of the completion of the purchase.

If the purchasers are prepared to pay off the whole of the mortgage, whether it charges only the land taken, or the land taken and other land, they are entitled to a transfer or reconveyance of the mortgage, or the joining of the mortgagee in the conveyance, on payment of principal, interest and costs.

The amount of the interest to be paid is the amount due at the date of payment of the principal money, together with six months' interest, or if the purchasers have prior to redemption given notice to redeem at the end of six months from the day of giving such notice, or if the mortgagee has given six months' notice of intention to redeem, the purchasers are entitled to a conveyance or release of the mortgagee's interest in the land at or before the expiration of either such period, on payment or tender of interest to the end of the period, in addition to the principal, costs and expenses (*w*). Any additional interest payable in order to obtain possession is ultimately to be borne by the vendor, who is not exonerated, by virtue of the Act, from giving notice to redeem (*x*).

If the mortgage, with interest and costs, exceeds the value of the land on which it is secured, then, unless an agreement is made between the owner and mortgagee on the one part and the purchasers on the other part, as to the compensation to be paid, the value or compensation is to be ascertained as in other cases of disputed compensation. On payment of the value or compensation so agreed or determined, the mortgagee must convey or release his interest to the purchasers, or as they shall direct (*a*).

If part only of the mortgaged land is to be taken, and the mortgagee considers that the remaining part is an insufficient security, or is unwilling to release the part required, the purchasers can have the value of the land to be taken and the compensation for severance or other compensation ascertained, in default of agreement, as in the case of disputed compensation, and on payment of such value and compensation to the mortgagee, the purchasers are entitled to a transfer or reconveyance of the mortgage so far as it affects the land taken. In such a case a memorandum of the amount paid is to be endorsed on the mortgage deed and signed by the mortgagee, and the purchasers must on request furnish a copy thereof to the mortgagor (*b*).

(*s*) Act of 1845, ss. 108—114; 2 Statutes 1150—1153.

(*t*) *Ibid.*, s. 18; *ibid.*, 1120; *Martin v. London, Chatham and Dover Rail. Co.* (1866), 1 Ch. App. 501; 11 Digest 274, 2019.

(*u*) *Cooke v. L.C.C.*, [1911] 1 Ch. 604; 11 Digest 173, 503.

(*v*) Act of 1845, s. 108; 2 Statutes 1150.

(*w*) *Ibid.*

(*x*) *Spencer-Bell to London and South Western Rail. Co. and Metropolitan District Rail. Co.* (1885), 33 W. R. 771; 11 Digest 275, 2023.

(*a*) Act of 1845, s. 110; 2 Statutes 1152.

(*b*) *Ibid.*, s. 112; *ibid.*

If a mortgagee on payment or tender of the compensation, interest and costs due to be paid in accordance with the provisions of the Lands Clauses Acts, or agreed or determined to be due to him, does not release his interest in the land taken, or if he fails to adduce a good title, the purchasers may deposit the money in the bank in the manner provided by the Act of 1845 in like cases, and may execute a deed poll duly stamped, which will have the effect of vesting in them the interests of the mortgagee, whether as trustee or otherwise, and they will thereupon be entitled to possession, if the mortgagee was so entitled (c). If one sum is paid into the bank, in respect of the interests of the mortgagor and the mortgagee, the court will apportion the amount due to each (d), but if money is paid to the credit of the mortgagor alone, the court will restrain the undertakers until the mortgagee's interest is secured (e).

If lands are taken, which are of less value than the principal, interest and costs secured thereon, the mortgagee's rights and remedies against the mortgagor, other than the rights to the land taken, remain in force in respect of the part of the mortgage debt not satisfied by payment or deposit made by the purchasers (f). Where part only of the mortgaged lands are taken, the mortgagee also retains the same powers and remedies for recovery of the residue of the mortgage money out of the residue of the mortgaged land as he had for the recovery thereof out of the whole of the lands originally mortgaged (g).

A mortgagee in possession with power of sale may also claim compensation for injurious affection of the land remaining in his hands (h).

The question whether compensation payable for good will or loss of profits on the taking of land, may be claimed by a mortgagee as compensation for the land is one which depends on the circumstances of each case, and the terms of the mortgage deed must, of course, be considered. In general, such compensation passes with the land, and may be taken by the mortgagee if the remainder of the compensation is not sufficient to satisfy his claim (i), but not if the compensation is for good will depending on the personal skill of the owner (k). [970]

Leases and Tenancies.—Where statutory undertakers require land in the possession of lessees or tenants, which is the subject of a compulsory purchase, they may either purchase the freehold and wait until the lease or tenancy expires by effluxion of time or by the operation of a notice to quit, or they may acquire the lessee's or tenant's interest by exercising their statutory powers. A lessee or tenant cannot insist upon the service of a notice to treat, and the undertakers, after they have acquired the landlord's interest, can terminate a lease or tenancy

(c) Act of 1845, ss. 109, 111, 113; 2 Statutes 1151—1153.

(d) *Pile v. Pile, Ex parte Lambton* (1876), 3 Ch. D. 36; 11 Digest 275, 2024.

(e) *Ranken v. East and West India Docks, etc., Rail. Co.* (1849), 12 Beav. 298; 11 Digest 274, 2017.

(f) Act of 1845, s. 111; 2 Statutes 1152.

(g) *Ibid.*, s. 113; *ibid.*, 1153.

(h) *R. v. Middlesex (Clerk of the Peace)*, [1914] 3 K. B. 259; 11 Digest 275, 2026.

(i) *Pile v. Pile, Ex parte Lambton, supra*, and cf. *Inland Revenue Commissioners v. Glasgow and South Western Rail. Co.* (1887), 12 App. Cas. 315; 11 Digest 236, 1267 i; *The Same v. Muller & Co.'s Margarine, Ltd.*, [1901] A. C. 217; 39 Digest 278, 627.

(k) *Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472; 11 Digest 128, 177. In this case the special Act provided for payment in respect of loss to which an owner might be personally entitled, but see *Re Bennett, Clarke v. White*, [1899] 1 Ch. 316; Digest (Supp.).

agreement in accordance with its terms (*l*), or they may ask the owner to do so before completion of the purchase (*m*); if they then defer taking possession until the expiration of the lease or tenancy no compensation will be payable under the Lands Clauses Acts (*n*). The right of undertakers, who have purchased the landlord's interest, to give notice to quit clearly exists in the case of yearly tenancies (*o*), and it would appear to exist also in the case of a lease containing powers to terminate on notice, except that advantage cannot be taken of special powers to terminate a lease reserved by a lessor so as to deprive the lessee of his right to compensation (*p*).

If early possession is required, the undertakers must either serve notice to treat, or proceed under sect. 121 of the Act of 1845 (*q*), which enables them to require possession from any person in possession of land, having no greater interest than as tenant for a year or from year to year; two justices are to determine the compensation, except in cases to which the Act of 1919 applies (*r*), and on payment or tender thereof possession may be taken. This section applies to every interest of less than a year's duration, including that of a tenant for a long term of which less than a year remains unexpired, when the requirement of possession is made (*s*).

The date for determining the duration of a tenant's interest is that at which notice requiring possession is given (*t*), or, if no notice is given and entry is made under sect. 85 (*u*), then the date of such entry (*a*). If sect. 121 be not applicable, notice to treat must be given, and such a notice may be given even if the case falls within the section.

In all cases to which the Act of 1919 applies, compensation must be assessed in accordance with the provisions of that Act; in other cases, if a tenant is required to give up possession under sect. 121 of the Act of 1845, compensation must be assessed in accordance with the provisions of that section; if, however, the tenant has only been served with a notice to treat, he may require compensation to be assessed under the earlier sections of the Act of 1845, applicable to owners in general (*b*), for service of a notice to treat is not a "requiring possession" within the meaning of sect. 121 (*c*); moreover, if land is taken from a tenant for less than a year, and other land held by him

(*l*) *Syers v. Metropolitan Board of Works* (1877), 36 L. T. 277, C. A., per JESSEL, M.R., at p. 278; 11 Digest 173, 502; and see *Stevenson v. North British Rail. Co.* (1901), 4 F. (Ct. of Sess.) 224.

(*m*) *Ex parte Nadin* (1848), 17 L. J. (Ch.) 421; 11 Digest 280, 2080.

(*n*) But see the provisions of the Landlord and Tenant Act, 1927, s. 1; 10 Statutes 375.

(*o*) *Syers v. Metropolitan Board of Works*, *supra*.

(*p*) *Solway Junction Rail. Co. v. Jackson* (1874), 1 R. (Ct. of Sess.) 831; 11 Digest 276, 1.

(*q*) 2 Statutes 1156.

(*r*) See *ante*.

(*s*) *R. v. Great Northern Rail. Co.* (1876), 2 Q. B. D. 151; 11 Digest 280, 2073. See also *Sweetman v. Metropolitan Rail. Co.* (1864), 10 L. T. 156; 11 Digest 280, 2072 (tenant entitled in equity to a lease); *R. v. Manchester, etc., Rail. Co.* (1854), 23 L. T. (o. s.) 287; 19 Digest 592, 224 (house occupied *virtute officii*). An exclusive right to sell refreshments in a theatre does not constitute an interest in land giving a right to compensation; *Warr (Frank) & Co., Ltd. v. L.C.C.*, [1904] 1 K. B. 713, C. A.; 11 Digest 124, 155.

(*t*) *Tyson v. London Corp.* (1871), L. R. 7 C. P. 18; 11 Digest 281, 2086; and see *R. v. Kennedy*, [1893] 1 Q. B. 533; 11 Digest 281, 2087.

(*u*) See *ante*, "Entry on lands."

(*a*) *R. v. Great Northern Rail. Co.*, *supra*.

(*b*) *R. v. Vaughan* (1868), L. R. 4 Q. B. 190; 11 Digest 280, 2083.

(*c*) *R. v. Stone* (1866), L. R. 1 Q. B. 529; 11 Digest 175, 539.

for a longer period is thereby injured by severance, the whole compensation must be assessed under sect. 68 and not under sect. 121 (*d*).

Where a tenant receives a notice to treat or a notice requiring possession under sect. 121 of the Act of 1845, the effect of which is to make his position insecure, he may be entitled to compensation, although in fact not disturbed before the end of his term, on the ground that he has been put into the position of a mere tenant at sufferance, who may be turned out at any moment instead of at a fixed date (*e*).

If part only of the land comprised in a lease or tenancy is taken, the rent must be apportioned. The apportionment may be made by agreement between the landlord and tenant on the one part and the purchasers on the other part; failing agreement the apportionment must be made in manner provided by the Act of 1919 in cases to which that Act applies (*f*) and in other cases by two justices (*g*). It is the duty of the purchasers to bring the parties before the justices for the purpose (*h*).

As from the date when the apportionment is effected, the lessee becomes liable, as to all future accruing rent, only for so much of the rent as is apportioned to the land not acquired, and the lessor retains all his rights and remedies against the lessee in respect of such apportioned rent for that land as he previously had in respect of the whole rent for the whole of the land, and the covenants and conditions of the lease, except as to the amount of rent, remain in force with regard to the land not taken (*i*).

A lessee or tenant is entitled to compensation for damage by severance or other injurious affection if part only of his land is taken (*k*).

If a person claims compensation in respect of an interest greater than from year to year, he must produce or give the best evidence of his lease, and in default of so doing he is to be considered as only holding from year to year (*l*).

When the compensation is payable to a tenant of premises to which the Rent and Mortgage Interest Restrictions Acts apply, the tenant cannot, it is submitted, dispute the right to possession by virtue of those Acts, nor would the obtaining of an order or judgment for possession (*m*) be necessary as a condition precedent to the issue of a warrant to the sheriff for possession (*n*). [971]

Rentcharges, etc.—If land taken by promoters is subject to a rent service, rentcharge or chief or other rent, or other payment or incumbrance not otherwise provided for in the Lands Clauses Acts, the amount to be paid for the release of the land from the charge is to be settled,

(*d*) *Bexley Heath Rail. Co. v. North*, [1894] 2 Q. B. 579; 11 Digest 281, 2093. As to the provisions of s. 68, see *ante*, "Methods of Determination of Compensation."

(*e*) *Cranwell v. London Corpn.* (1870), L. R. 5 Exch. 284; 11 Digest 280, 2084.

(*f*) 2 Statutes 1176. See *ante*, "Acquisition of Land (Assessment of Compensation) Act, 1919."

(*g*) Act of 1845, s. 119; 2 Statutes 1155. Under this Act, an arbitrator or umpire has no power to apportion rents. *Re Ware and Regent's Canal Co.* (1854), 9 Exch. 395; 11 Digest 186, 667.

(*h*) *Slipper v. Tottenham, etc., Rail. Co.* (1867), L. R. 4 Eq. 112, *per* ROMILLY, M.R., at p. 115; 31 Digest 266, 4077.

(*i*) Act of 1845, s. 119; 2 Statutes 1155.

(*k*) *Ibid.*, s. 120, 121; *ibid.*, 1156.

(*l*) *Ibid.*, s. 122; *ibid.*

(*m*) Rent and Mortgage Interest Restrictions Act, 1933, s. 3; 26 Statutes 270.

(*n*) Act of 1845, s. 91; 2 Statutes 1145.

in default of agreement, in accordance with the provisions of the Act of 1919, where the lands are authorised to be acquired compulsorily by any Government department or any local or public authority (o).

If a part only of the lands charged is taken by the promoters, and the remainder thereof is a sufficient security for the charge, the party entitled to the charge may, with the consent of the owner, release the part taken, on condition or in consideration of the lands not so taken remaining exclusively subject to the whole charge (p). Alternatively, an apportionment of the charge may be agreed between the landowner and the owner of the charge on the one part and the promoters on the other part, or in default of any agreement may be settled by two justices (q), the compensation for the amount so apportioned as a charge on the land taken being thereafter settled, in default of agreement, in the manner above described.

When the compensation for release of the charge has been agreed or determined, the owner of the charge must on payment or tender of the compensation by the promoters release the charge by deed. If he fails to do so, or fails to adduce a good title, the promoters may deposit the compensation in the bank, and, if they think fit, execute a deed poll duly stamped, as in the case of deposit and execution of a deed poll on a purchase under the Lands Clauses Acts. On the execution of a release by the owner of the charge or of a deed poll by the promoters, the charge in respect of which such compensation has been paid or deposited is extinguished (r).

When part only of lands subject to a charge is taken and released from the charge, the remainder of the land remains subject thereto or to so much thereof as has not been extinguished, and the person entitled to the charge retains over the remainder of the lands the same rights as he had over the whole of the lands.

A memorandum of the release of the charge must be endorsed by the promoters, at their expense, on the deed or instrument creating or transferring the charge, if it is tendered to them for that purpose by the owner of the charge. The memorandum must be sealed by the promoters if they are a corporate body, and must show what part of the whole lands has been taken, what proportion of the charge has been released and what remains payable, or, if the lands taken have been released from the charge, that the remaining lands are exclusively charged therewith (s). [972]

Common Lands.—In the case of land subject to rights of common, the compensation, agreed or determined, in respect of the right in the

(o) Act of 1919, s. 1; 2 Statutes 1176; Act of 1845, s. 115; 2 Statutes 1154. The fact that the amount to be paid is, in s. 115, termed "consideration" and not "compensation" would not appear to affect the position. In cases other than those above mentioned, the provisions of the Lands Clauses Acts as to settlement of compensation will apply.

(p) Where a small portion of an estate subject to an annuity was taken, the remainder of the estate was charged with the whole annuity, and the court ordered that the conveyance should contain a covenant by the vendor that as between himself and the promoters, the annuity would be chargeable on the land remaining in his possession, in exoneration of the land conveyed. *Powell v. South Wales Rail. Co.* (1855), 1 Jur. (N. S.) 773; 42 Digest 561, 1272.

(q) Act of 1845, s. 116; 2 Statutes 1154. The procedure prescribed for the apportionment of rents by the Act of 1919 is limited to rents payable under leases; see s. 1 (1); 2 Statutes 1176. For form of agreement for apportionment of rentcharge, see 9 Ency. Forms, p. 89.

(r) Act of 1845, s. 117; 2 Statutes 1154.

(s) *Ibid.*, s. 118; *ibid.*, 1155.

soil is to be paid to such person, other than the commoners, as may be entitled thereto (*t*).

Upon payment or deposit in the bank of such compensation, the owner of the rights in the soil is to convey to the undertakers the land required, subject to existing commonable and other rights, whether such rights belong to such owner or to other persons (*u*). The land may not, however, be entered on and used for the authorised works until the commoners' compensation has been determined and paid (*a*).

The compensation to be paid for common lands where the commoners own the soil, and for common rights where the commoners do not own the soil, is to be determined if possible by agreement with a committee appointed by the commoners (*b*). The undertakers may summon a meeting of the parties entitled to commonable or other rights for the purpose of appointing a committee to treat with them (*c*). The committee, who are to be appointed by a majority of the persons entitled to the rights in question (voting themselves and not by proxy) are not to exceed five in number (*d*) and are empowered to make an agreement with the undertakers as to the compensation to be paid for the commonable and other rights, binding on all the commoners, and to receive and to give a valid receipt for the same, and to apportion the amount among the parties interested. The undertakers, after payment of the compensation, are not concerned to see to the apportionment of it (*e*).

If no agreement is arrived at, the amount is to be determined as in other cases of disputed compensation (*f*).

If, however, no effectual meeting is held after notice of meeting has been given, or if the meeting fail to appoint a committee, the compensation is to be determined by a surveyor to be appointed by two justices, as in the case of parties who cannot be found (*g*).

Upon payment or tender to the committee or any three of them, or if there be no committee then upon deposit of the compensation in the bank in manner provided in like cases, the undertakers may execute a deed poll vesting the land in them free from all commonable rights, and thereupon they are entitled to immediate possession (*h*).

As to restrictions on the acquisition of common lands, and as to the exchange of common lands under particular Acts, see title COMMONS.

As to procedure under the Standing Orders of Parliament when powers are sought to acquire common land compulsorily by Bill, see title BILLS, PARLIAMENTARY AND PRIVATE, at pp. 74, 77, 82 of Vol. II. [973]

Land of Owners Abroad, etc.—Where land is to be taken from any person—

- (i.) who by reason of his absence from the kingdom is prevented from treating; or

(*t*) Act of 1845, s. 99; 2 Statutes 1148.

(*u*) *Ibid.*, s. 100; *ibid.* For form of conveyance, see 9 Ency. Forms, p. 122.

(*a*) *Stoneham v. London, Brighton and South Coast Rail. Co.* (1871), L. R. 7 Q. B. 1; 11 Digest 39, 543.

(*b*) Act of 1845, s. 101; 2 Statutes 1149. A strict compliance with the provisions of the Act as to determination of compensation by agreement is not essential. See *v. Stafford and Uttoxeter Rail. Co.* (1875), 23 W. R. 868; 11 Digest 39, 545.

(*c*) *Ibid.*, s. 102; *ibid.* For form of notice of meeting and instructions as to publication, etc., see 9 Ency. Forms, p. 121.

(*d*) *Ibid.*, s. 103; *ibid.*

(*e*) *Ibid.*, s. 104; *ibid.*, 1150.

(*f*) *Ibid.*, s. 105; *ibid.*

(*g*) *Ibid.*, s. 106; *ibid.*

(*h*) *Ibid.*, s. 107; *ibid.* For form of deed poll, see 9 Ency. Forms, p. 124.

- (ii.) who cannot after diligent inquiry be found ; or
- (iii.) who does not appear at the time appointed for an inquiry before a jury,

an able practical surveyor, nominated for the purpose by two justices, is to determine the amount of compensation to be paid (*i*).

The provision relating to persons who cannot be found does not apply where there is merely a dispute as to ownership (*k*).

The undertakers must apply to the justices to nominate a surveyor (*l*), and must satisfy them that circumstances have arisen giving them jurisdiction to make the nomination, which must be in writing (*m*).

The surveyor, before acting, must make a declaration before the nominating justices, or one of them, which is to be written at the foot of the nomination, that he will faithfully, impartially and honestly, and to the best of his skill and ability, execute the duty of making the valuation (*n*).

The surveyor must actually inspect the land before making his valuation (*o*), and must annex to it the nomination and declaration above mentioned, together with a signed declaration of the correctness of his valuation, and the whole are to be preserved by the undertakers, who must produce the same on demand to the owner of the land and all other parties interested (*p*). The expenses of the valuation are to be borne by the undertakers (*q*).

The amount of the valuation is to be deposited in the bank by the undertakers, who may thereupon execute a deed poll, vesting in them the interests of the parties for whose use and in respect whereof the money is so deposited (*r*).

When an absent owner returns from abroad, or when an owner formerly unknown is discovered, he may dispute the surveyor's award before applying to the court for payment or investment of the money deposited, and may by notice in writing require the question of compensation to be submitted to arbitration in the same manner as other cases of disputed compensation, whereupon the question whether the sum deposited is sufficient, or whether any further sum should be paid or deposited is to be determined by the arbitrator or umpire (*s*).

If a further sum is awarded, it must be paid or deposited within fourteen days of the award, and if not so paid it may be recovered by attachment or by action in the High Court (*t*).

If the arbitrators determine the sum deposited to be sufficient, the costs of the arbitration are in their discretion ; if they determine it to be insufficient, the undertakers bear the costs (*u*). [974]

Interests Omitted to be Purchased.—If at any time after promoters have entered upon lands which they are authorised to acquire and

(*i*) Act of 1845, s. 58 ; 2 Statutes 1132.

(*k*) *Ex parte London and South Western Rail. Co.* (1869), 38 L. J. (Ch.) 527 ; 11 Digest 184, 648.

(*l*) For form of request to justices, see 9 Ency. Forms, p. 65.

(*m*) Act of 1845, s. 59 ; 2 Statutes 1132. For form of nomination, see 9 Ency. Forms, p. 66.

(*n*) *Ibid.*, s. 60 ; *ibid.*

(*o*) *Cotter v. Metropolitan Rail. Co.* (1864), 10 L. T. 777 ; 11 Digest 221, 1050.

(*p*) Act of 1845, ss. 59, 61 ; 2 Statutes 1132.

(*q*) *Ibid.*, s. 62 ; *ibid.*, 1133.

(*r*) *Ibid.*, ss. 76, 77 ; *ibid.*, 1138, 1139.

(*s*) *Ibid.*, ss. 64, 65 ; *ibid.*, 1133. For form of notice, see 9 Ency. Forms, p. 67.

(*t*) *Ibid.*, s. 66 ; *ibid.*

(*u*) *Ibid.*, s. 67 ; *ibid.*, 1134.

which they require permanently for their undertaking, any party appears to be entitled to some estate, right or interest in, or charge upon, such lands, and the promoters have through mistake or inadvertence failed to purchase or to pay compensation for it, they may remain in possession of the land upon condition of making compensation within the prescribed period, such compensation to include an allowance for mesne profits and interest (*a*). The period prescribed within which compensation in such cases is to be paid is six months after notice of the estate, right, interest or charge if the same is not disputed, or, if disputed, six months after the claim thereto has been established.

The provision applies only where there has been some actual mistake or inadvertence, as where the name of a lessee has been omitted from the book of reference (*b*) or from the deposited plans by reason of a mistake caused by the boundaries not having been clearly defined (*c*). It does not apply to cases where the promoters enter on land with knowledge of the fact that some interest in the land has not been dealt with by them in the prescribed manner (*d*).

Where promoters entered on land for which notice to treat had been served, and on which works had been constructed by them, disregarding a notice from the owner that they were trespassing, it was held that this was not an interest omitted by mistake, but the owner was not entitled to any injunction because he had stood by and allowed the work to proceed for nearly two years; judgment was given for damages for trespass, to be ascertained by arbitration (*e*).

The period of six months during which the promoters may remain in possession and within which compensation is to be made, runs in case of a dispute as to ownership from the date when the owner's title is finally established at law (*f*). In a case in which by the judgment of the court the matter was referred to arbitration, the time was held to run from the date of the award (*g*).

Where the title is not in dispute, an action for ejectment within the six months cannot be maintained (*h*), though where the title is in

(*a*) Act of 1845, s. 124; 2 Statutes 1157.

(*b*) *Kemp v. West End of London and Crystal Palace Rail. Co.* (1855), 3 Eq. Rep. 940; 11 Digest 281, 2098.

(*c*) *Hyde v. Manchester Corpn.* (1852), 5 De G. & Sm. 249; 11 Digest 281, 2096.

(*d*) *Martin v. London, Chatham and Dover Rail. Co.* (1866), 1 Ch. App. 501; 11 Digest 274, 2019; *Stretton v. Great Western and Brentford Rail. Co.* (1870), 5 Ch. App. 751; 11 Digest 216, 1002, where the boundaries were difficult to ascertain and promoters served notice to treat, but took no further proceedings thereon before entry on the land. *Cardwell v. Midland Rail. Co.* (1904), 21 T. L. R. 22, C. A.; 11 Digest 281, 2101, where a greater amount of land was entered upon than was shown in the notice to treat.

(*e*) *Thomas v. Barry Dock and Rails. Co.* (1889), 5 T. L. R. 360; 11 Digest 282, 2102. See also *Lind v. Isle of Wight Ferry Co.* (1862), 7 L. T. 416; 11 Digest 282, 2107, where owner interfered with the works; *Wood v. Charing Cross Rail. Co.* (1863), 33 Beav. 290; 11 Digest 282, 2108, where the question of compensation alone was outstanding, and the public would have been inconvenienced by an order of the court tending to stop the opening of the railway.

(*f*) *Hyde v. Manchester Corpn.*, *supra*, where application was made for a new trial and the time did not begin to run until the application was refused.

(*g*) *Caledonian Rail. Co. v. Davidson*, [1903] A. C. 22; 11 Digest 282, 2104, where HALSBURY, L.C., said, *obiter*, at p. 29, that it is the duty of the owner to initiate the proceedings by making a claim, to enable the parties to arrive at a proper conclusion within the six months.

(*h*) *Jolly v. Wimbledon and Dorking Rail. Co.* (1861), 31 L. J. (Q. B.) 95; 11 Digest 282, 2106.

dispute an action for ejectment affords a ready means of testing the right (*i*).

The purchase money or compensation for interest omitted to be purchased is to be agreed or awarded and paid as though the promoters had purchased the same before entering upon the land, or in a manner as near thereto as circumstances will permit (*k*).

The value of the land or of the interest claimed therein, is to be assessed as at the date of entry of the promoters, without regard to any improvements or works made by the promoters, and as though the works had not been constructed (*l*).

If a claim to an omitted interest is unsuccessfully disputed by the promoters, they are liable for the claimant's costs as between solicitor and client (*m*). [975]

XIV. CONVEYANCES OF LAND

A deed vesting the land taken in the undertakers (*n*) must be executed, and they cannot rely for their title merely on evidence of payment of the compensation money (*o*). The instrument of conveyance which effects the vesting of the property, after being stamped with the appropriate *ad valorem* duty, must, within three months of the date of vesting, be produced to the Commissioners of Inland Revenue (*p*).

The relation of vendor and purchaser is established between the owner and the undertakers immediately the amount of compensation is determined, the statutory provisions relating to the determination having been duly observed (*q*), and in general the ordinary rules relating to vendor and purchaser apply (*r*), though the special facilities conferred and the special modes prescribed by the Lands Clauses Acts for acquiring land remain in full force, notwithstanding the provisions of the Law of Property Act, 1925 (*s*).

(*i*) *Salisbury (Marquis) v. Great Northern Rail. Co.* (1858), 28 L. J. (C. P.) 40; 38 Digest 275, 144. S. 124 of the Act of 1845; 2 Statutes 1157, is not intended to interdict an action for ejectment, but to authorise the court to interfere and allow the defendants to remain in possession by acceding to an application to restrain the execution, thus giving them the benefit of the Act in that way after the right has been decided. *Per WILLIAMS, J.*, at p. 55.

(*k*) Act of 1845, s. 124; 2 Statutes 1157. See Act of 1919, s. 1; 2 Statutes 1176.

(*l*) Act of 1845, s. 125; 2 Statutes 1157. For a case in which the promoters were held not to have the protection of s. 124, and judgment was given for the then present value of the land with mesne profits, in respect of user for six years, see *Stretton v. Great Western and Brentford Rail. Co.* (1870), 5 Ch. App. 751; 11 Digest 216, 1002.

(*m*) *Ibid.*, s. 124; *ibid.*, 1157.

(*n*) As to conveyances generally, see titles ACQUISITION OF LAND (OTHER THAN COMPULSORY), CONVEYANCING. For forms of conveyance, see 9 Ency. Forms, pp. 93 ff.; 15 Ency. Forms, pp. 915—924. Statutory forms of conveyance are contained in s. 81 and Schedules to the Act of 1845; 2 Statutes 1140, 1165, but these are seldom used.

(*o*) *Re Cary-Elwes' Contract*, [1906] 2 Ch. 143; 17 Digest 232, 470.

(*p*) Finance Act, 1895, s. 12; 16 Statutes 690. The production so required does not obviate compliance also with s. 28 of the Finance Act, 1931; 24 Statutes 226. Failure to produce the document within the time specified renders the undertakers liable to payment of a sum equal to the duty *ad valorem* with interest at 5 per cent.

(*q*) *Bridgend Gas and Water Co. v. Dunraven* (1885), 31 Ch. D. 219; 11 Digest 229, 1163.

(*r*) *Harding v. Metropolitan Rail. Co.* (1872), 7 Ch. App. 154, L. C.; 11 Digest 197, 762.

(*s*) S. 7 (3) (c); 15 Statutes 189.

Specific performance will be decreed at the suit of either party (*t*) subject to proof of title (*u*), and the owner has also an alternative remedy by action for payment of the compensation money after execution and tender of a conveyance of the land (*a*), at any time within six years of the date of the award (*b*).

On payment or tender of the compensation money, or after deposit thereof in the bank in cases where such a course is prescribed or permitted by the Act of 1845 (*c*), the undertakers may execute a deed poll vesting in themselves the land or the interest in the land which is the subject of the compensation—

1. If the owner (not being a person under disability), including a mortgagee or owner of a rentcharge, refuses to accept payment of the compensation ; or
2. If the owner or person enabled to convey fails or neglects to make out a good title or refuses to convey or release his interest (*d*) ; or
3. If the owner is prevented from treating through absence from the kingdom, or cannot after diligent inquiry be found, or does not appear at the time appointed for an inquiry before a jury (*e*) ; or
4. If the owner of soil subject to common rights makes default in conveying his rights ; and
5. In all cases of acquisition of common or other rights (other than the right in the soil) in lands subject to rights of common (*f*).

On the execution of a deed poll, the undertakers acquire the interest and rights of the parties for whose use the money has been deposited including the right to immediate possession.

An unpaid vendor has the ordinary vendor's lien on the lands for unpaid purchase money and compensation, which is unaffected by the making of a deposit under sect. 85 of the Act of 1845 (*g*) or by a deposit by agreement before the compensation has been ascertained (*h*).

Interest at 4 per cent. is payable on the amount of the compensation determined, as from the time when the purchasers may prudently take possession, *i.e.* when a good title is shown (*i*). If possession is taken at an earlier date, interest runs from that date (*k*). Interest is not payable after deposit of money in the bank (*l*). [976]

(*t*) *Regent's Canal Co. v. Ware* (1857), 23 Beav. 575 ; 11 Digest 226, 1122 ; *Harding v. Metropolitan Rail. Co.* (1872), 7 Ch. App. 154, L. C. ; 11 Digest 197, 762.

(*u*) *Gunston v. East Gloucestershire Rail. Co.* (1868), 18 L. T. 8 ; 42 Digest 552, 1137 ; and see *Marson v. London, Chatham and Dover Rail. Co.* (1868), L. R. 6 Eq. 101 ; 11 Digest 184, 643 ; (1869), L. R. 7 Eq. 546.

(*a*) *East London Union v. Metropolitan Rail. Co.* (1869), L. R. 4 Exch. 309 ; 11 Digest 198, 764.

(*b*) Limitation Act, 1623 (21 Jac. 1, c. 16), s. 3 ; 10 Statutes 429 ; *Turner v. Midland Rail. Co.*, [1911] 1 K. B. 832, D. C. ; 32 Digest 327, 133.

(*c*) See title COMPENSATION ON ACQUISITION OF LAND.

(*d*) Act of 1845, ss. 75—77, 108—113, 117 ; 2 Statutes 1138, 1139, 1150—1153, 1154, and see *ante*, "Mortgages" and "Rentcharges, etc."

(*e*) *Ibid.*, ss. 76, 77 ; *ibid.*, 1138, 1139, and see *ante*, "Lands of Owners Abroad, etc."

(*f*) *Ibid.*, ss. 100, 107 ; *ibid.*, 1148, 1150, and see *ante*, "Common Lands."

(*g*) *Ibid.*, 1142 ; see *ante*, "Entry on Lands."

(*h*) *Walker v. Ware, Hadham and Buntingford Rail. Co.* (1865), L. R. 1 Eq. 195 ; 11 Digest 230, 1177.

(*i*) *Re Pigott and Great Western Rail. Co.* (1881), 18 Ch. D. 146 ; 11 Digest 226, 1125.

(*k*) *Rhys v. Dare Valley Rail. Co.* (1874), L. R. 19 Eq. 93 ; 11 Digest 232, 1203.

(*l*) *Lewis v. South Wales Rail. Co.* (1852), 22 L. J. (Ch.) 209 ; 11 Digest 232, 1212.

XV. COSTS

Of Award.—The undertakers pay the costs of the arbitrators on taking up the award, and the owner may compel them so to do by *mandamus* on a prerogative writ (*m*). [977]

Of Arbitration or Inquiry under Lands Clauses Acts.—The liability for costs of an arbitration or inquiry by a jury depends on the relation of the amount of the unconditional offer made by the undertakers to the amount of the award or verdict (*n*). The undertakers pay the costs unless the award or verdict is the same as or less than the offer, in which case each party bears his own costs and the costs of the arbitrators or of the inquiry are shared equally (*o*).

If separate offers are made under different heads of claim, the aggregates of the offers and the awards must be considered (*p*).

Costs incidental to an inquiry or arbitration may at the instance of either party be taxed by a taxing master (*q*), and the court has no power to review a taxation unless the master exceeds his jurisdiction (*r*). [978]

Of Arbitration under the Act of 1919.—The costs of an arbitration by an official or an agreed arbitrator under the Act of 1919, including any fees, charges and expenses of the arbitration or award (*s*) are in general in the discretion of the arbitrator, and he may direct how and by and to whom the costs or any part thereof are to be paid, and he may disallow the cost of counsel (*t*).

Where a question has been referred for determination to the Commissioners of Inland Revenue, and the Commissioners have declined to proceed with the matter, the official arbitrator to whom the case is subsequently referred must take into consideration, in awarding costs, any report of the Commissioners as to the refusal or neglect of either party which rendered a reference to him necessary (*u*).

If no notice of claim is given by the claimant, or if such a notice when given does not contain sufficient particulars or is not given in sufficient time to allow the acquiring authority to make a proper offer, the arbitrator must, in the absence of special reasons, order the claimant to bear his own costs and to pay the costs of the acquiring authority from the date when a sufficient notice of claim should have

(*m*) Act of 1845, s. 35; 2 Statutes 1125; *R. v. South Devon Rail. Co.* (1850), 15 Q. B. 1043; 11 Digest 195, 744; *R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512; 16 Digest 295, 1033. If the owner takes up the award, he cannot recover the arbitrator's costs from the undertakers, *Shrewsbury (Earl) v. Wirral Railways Committee*, [1895] 2 Ch. 812, C. A.; 11 Digest 199, 787.

(*n*) The offer must be exclusive of costs. *Balls v. Metropolitan Board of Works* (1866), L. R. 1 Q. B. 337; 11 Digest 210, 936.

(*o*) Act of 1845, ss. 34, 51; 2 Statutes 1125, 1129. If an offer is made and withdrawn, the undertakers cannot avail themselves of the benefit of these sections; *Foster v. Sheffield Corpn.* (1895), 72 L. T. 549, C. A.; 11 Digest 200, 791.

(*p*) *Re Hayward and Metropolitan Rail. Co.* (1864), 33 L. J. (Q. B.) 73; 11 Digest 203, 824.

(*q*) Act of 1845, s. 52; 2 Statutes 1130; Lands Clauses (Taxation of Costs) Act, 1895, s. 1; 2 Statutes 1169, but see the Act of 1919, s. 5 (5); 2 Statutes 1180; as to proceedings under that Act.

(*r*) *Sandback Charity Trustees v. North Staffordshire Rail. Co.* (1877), 3 Q. B. D. 1, C. A.; 11 Digest 202, 807, and see *Re Cannings, Ltd. and Middlesex County Council*, [1907] 1 K. B. 51, C. A.; 11 Digest 202, 808.

(*s*) Act of 1919, s. 5 (8); 2 Statutes 1180.

(*t*) *Ibid.*, s. 5 (4). The arbitrator may award a lump sum for costs. *Bradshaw v. Air Council*, [1926] Ch. 329; Digest (Supp.).

(*u*) *Ibid.*, s. 8 (2) (e); 2 Statutes 1182.

been delivered (a). Where the amount awarded does not exceed the amount of an unconditional offer made by the acquiring authority, the arbitrator must likewise, in the absence of special reasons, order the claimant to bear his own costs and to pay the costs of the acquiring authority incurred after such offer was made (b).

Conversely, if the amount awarded is equal to or exceeds the amount of an unconditional offer made by a claimant, who has delivered a sufficient notice of claim, the arbitrator must, in the absence of special reasons, order the acquiring authority to bear their own costs and to pay the costs of the claimant incurred after the offer was made (c).

The arbitrator may tax costs ordered by him to be paid or direct how they are to be taxed (d).

Where a claimant is ordered to pay costs, the acquiring authority may deduct the amount thereof from the compensation payable to him (e).

The acquiring authority may recover costs, not deducted from compensation, summarily as a civil debt, without prejudice to any other method of recovery (f). [979]

Of Conveyance.—The costs of and incidental to conveyances and assurances of lands taken are payable by the undertakers, including charges incurred on the part of the vendor and the purchaser (g). The costs payable include charges incurred in getting in the legal estate and perfecting the title, as, for example, the taking out of letters of administration (h).

As to the scales applicable to costs of conveyances, see title ACQUISITION OF LAND (OTHER THAN COMPULSORY), at p. 60 of Vol. I.

The costs of apportionment of rents are not costs of or incidental to the conveyance, but of ascertaining what is to be conveyed, and are not, as such, payable by the undertakers. They may, however, be included in the claim for compensation (i).

The costs may be taxed, at the expense of the undertakers, unless one-sixth is disallowed, when the costs of taxation are to be borne by the party whose costs are taxed (k). [980]

Of Dealing with Money Deposited.—In all cases of money deposited in the bank, the court may order payment by the undertakers, of costs :

- in relation to the purchase of the land not otherwise provided for ;
- of interim investments ;
- of reinvestment ;
- of obtaining the necessary order for these purposes and for the payment of dividends and principal ;

except costs of adverse litigation and costs incurred through the wilful default of the owner (l).

For the numerous cases dealing with these subjects, see Halsbury's Laws of England (Hailsham ed.), Vol. 2, pp. 155—167. [981]

(a) Act of 1919, s. 5 (2) ; 2 Statutes 1179.

(b) *Ibid.*, s. 5 (1).

(c) Act of 1919, s. 5 (3) ; 2 Statutes 1180.

(d) *Ibid.*, s. 5 (5).

(e) *Ibid.*, s. 5 (6).

(f) *Ibid.*, s. 5 (7).

(g) Act of 1845, s. 82 ; 2 Statutes 1141. The provisions of this section do not apply to purchases under the Small Holdings and Allotments Act, 1926, see s. 17 (1) of that Act ; 1 Statutes 331.

(h) *Re Liverpool Improvement Act (1868)*, L. R. 5 Eq. 282 ; 11 Digest 235, 1247.

(i) *Re Hampstead Junction Rail. Co., Ex parte Buck (1863)*, 33 L. J. (Ch.) 79 ; 11 Digest 235, 1245.

(k) Act of 1845, s. 83 ; 2 Statutes 1141.

(l) *Ibid.*, s. 80 ; *ibid.*, 1140.

Of Determining Right to Land.—If the undertakers dispute a claim to land taken, or any interest therein, and the claimant establishes his claim, they must pay the full cost of the litigation in respect thereof, such costs in case of dispute to be settled by the proper officer of the court (*m*). [982]

(*m*) Act of 1845, s. 126; 2 Statutes 1158. "Full costs" means solicitor and client costs. *Doe d. Hyde v. Manchester Corpn.* (1852), 12 C. B. 474; and see *Caledonian Rail. Co. v. Davidson*, [1930] A. C. 22, at pp. 35–38; 11 Digest 282, 2104.

COMPUTATION OF TIME

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Greenwich Mean Time.—Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred to must, unless it is otherwise specifically stated, be held in the case of Great Britain to be Greenwich mean time (*a*).

It has been held (*b*) that the Act of 1880 does not govern the meaning of "sunset" as used in sect. 85 (1) (*a*) of the L.G.A., 1888 (*c*), which required bicycles to be lighted between one hour after sunset and one hour before sunrise. For an interesting discussion as to the difference between "time of the clock" (to which "Greenwich mean time" relates) and "time of the day," see 62 J. P. 483. [983]

Summer Time.—By the Summer Time Act, 1922 (*d*), the time for general purposes is during the period of summer time, one hour in advance of Greenwich mean time; and whenever any reference to a point of time occurs in any enactment, Order in Council, order, regulation, rule, bye-law, deed, notice or other document whatsoever, the time referred to is, during the period of summer time, to be deemed to be the time as fixed for general purposes. The period of summer time begins at 2 a.m., Greenwich mean time, on the day next following the third Saturday in April, or if that day is Easter Day, the day next following the second Saturday in April, and ends at 2 a.m., Greenwich mean time, on the day next following the first Saturday in October (*e*). Sect. 1 (3) of the Act of 1922 contains a saving for the use of Greenwich time for purposes of astronomy, meteorology, or navigation and the construction of any document mentioning or referring to a point of time in connection with any of these purposes. [984]

Year.—The calendar year begins on January 1 and ends on December 31. [985]

(*a*) Statutes (Definition of Time) Act, 1880; 19 Statutes 419.

(*b*) *Gordon v. Cann* (1899), 68 L. J. (Q. B.) 434; 42 Digest 936, 81; *MacKinnon v. Nicolson*, [1916] S. C. (J.) 6; 42 Digest 936, c.

(*c*) Repealed by the Road Transport Lighting Act, 1927, s. 11 (1) and Schedule; 19 Statutes 104, 106.

(*d*) Summer Time Act, 1922, s. 1; 19 Statutes 420.

(*e*) *Ibid.*, s. 3; Summer Time Act, 1925; 19 Statutes 421.

In Acts passed after January 1, 1890, and in the Interpretation Act, 1889, the expression "financial year" means, unless the contrary intention appears, as respects any matters relating to the Consolidated Fund or moneys provided by Parliament, or to the Exchequer, or to Imperial taxes or finance, the twelve months ending March 31 (*f*). All accounts subject to audit by a district auditor are to be made up to this date unless the Minister of Health otherwise directs (*g*). [986]

The *income tax* year runs from April 6 to the following April 5, inclusive (*h*), and the *land tax* year from March 25 to the following March 24 inclusive (*i*). [987]

Month.—This expression means a calendar month in all statutes passed after 1850 (*k*), unless the contrary intention appears, and in all deeds, contracts, wills, orders and other instruments executed, made, or coming into operation after January 1, 1926, unless the context otherwise requires (*l*), means a calendar month. In documents executed before January 1, 1926, it generally means a lunar month of 28 days (*m*). [988]

Day.—This is properly the period of time which begins with one midnight and ends with the next midnight. It may also denote any period of 24 hours, and again it may denote the period between sunrise and sunset (*n*).

Where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded (*o*). An Act sometimes expressly provides accordingly (*p*). [989]

Where an act is required by statute to be done so many "days at least" before a given event, the time must be reckoned, excluding both the day of the act and that of the event (*q*). Where an interval of "not less than" fourteen days was required by statute to elapse between the passage and confirmation of a special resolution by a company, it was held that the respective days of meeting must be excluded (*r*). [990]

Where it was enacted that a debtor commits an act of bankruptcy if execution against him has been levied by seizure of his goods, and the goods have been held by the sheriff for twenty-one days (*s*), it was held that the sheriff must hold the goods for twenty-one whole days, in the computation of which the day on which the seizure is made is to be excluded (*t*). No general rule exists for the computation of time either

(*f*) Interpretation Act, 1889, s. 22; 18 Statutes 1001.

(*g*) L.G.A., 1933, s. 223; 26 Statutes 427. This Act repealed s. 71 of the L.G.A., 1888; 10 Statutes 744, which defined the "local financial year."

(*h*) Income Tax Act, 1918, s. 2; 9 Statutes 426.

(*i*) Taxes Management Act, 1880, s. 48; 16 Statutes 410.

(*k*) Interpretation Act, 1889, s. 3; 18 Statutes 993.

(*l*) Law of Property Act, 1925, s. 61; 15 Statutes 238.

(*m*) *Bruner v. Moore*, [1904] 1 Ch. 305; 42 Digest 931, 31; *Phipps (P.) & Co. v. Rogers*, [1925] 1 K. B. 14; 42 Digest 931, 43.

(*n*) Halsbury's Laws of England, Vol. 27, pp. 439, 440.

(*o*) *Goldsmiths' Co. v. West Metropolitan Rail. Co.*, [1904] 1 K. B. 1; 42 Digest 950, 237; *Radcliffe v. Bartholomew*, [1892] 1 Q. B. 161; 42 Digest 946, 188.

(*p*) See Municipal Corpns. Act, 1882, s. 230 (1); 10 Statutes 651; *Diseases of Animals Act*, 1894, s. 59 (2); 1 Statutes 421.

(*q*) *R. v. Shropshire J.J.* (1838), 8 Ad. & El. 173; 42 Digest 946, 196; *Young v. Higgon* (1840), 8 Dowl. 212; 42 Digest 947, 206; *Mitchell v. Foster* (1840), 9 Dowl. 527; 42 Digest 957, 297.

(*r*) *Re Railway Sleepers Supply Co.* (1885), 29 Ch. D. 204; 42 Digest 949, 228.

(*s*) Bankruptcy Act, 1914, s. 1 (1) (*c*); 1 Statutes 602.

(*t*) *Re North, Ex parte Hastuck*, [1895] 2 Q. B. 264; 42 Digest 946, 189.

under the Bankruptcy Act or any other statute, or, indeed, when time is mentioned in a contract; and the rational mode of computation is to have regard in each case to the purpose for which the computation is to be made (*u*). An enactment providing that a summons shall not be made returnable in less time than fourteen days from the day on which it is served (*a*), means that there must be fourteen clear days between the day on which a summons is served and the day on which it is made returnable (*b*).

Where, however, any period of time is mentioned in a statute, and there is no mention of "clear days" or other similar expression, the first day is excluded and the last day is included (*c*). See also hereon Rules of Supreme Court, Order LXIV., r. 12. [991]

Sundays and Public Holidays.—In the absence of a contrary intention expressed in any particular statute, Sundays must be included in the computation of time (*d*). But Sunday has been excluded in a few exceptional cases (*e*). [992]

Express provision is made in some statutes as to the computation of time for things to be done or permitted under them. The following are instances:

Sect. 230 of the Municipal Corpn. Act, 1882 (*f*), provides that where by that Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter Week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time, if it is done or taken on the next day afterwards, not being one of the days in this section specified. Sub-sect. (3) of the section provides that where by the Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time. [993]

Sect. 295 (1) of the L.G.A., 1933 (*g*), enacts that where the day or the last day on which any thing is required or permitted by or in pursuance of this Act to be done is a Sunday, Christmas Day, Good Friday, bank holiday or a day appointed for public thanksgiving or mourning, the requirement or permission shall be deemed to relate to the first day thereafter which is not one of the days before mentioned. This provision is supplemented by para. 12 of Part I. of the Second Schedule to the Act (*h*) which requires any of the days already mentioned to be

(*u*) *Re North, Ex parte Hasluck*, [1895] 2 Q. B. 264, per Lord ESHER, M.R., at p. 269; 42 Digest 946, 189.

(*a*) Food and Drugs (Adulteration) Act, 1928, s. 27 (5); 8 Statutes 900.

(*b*) *McQueen v. Jackson*, [1903] 2 K. B. 163; 25 Digest 106, 296.

(*c*) *Williams v. Burgess* (1840), 12 A. & E. 635; 42 Digest 950, 234; *Hardy v. Ryle* (1829), 9 B. & C. 603; 42 Digest 948, 210; *Radcliffe v. Bartholomew*, [1892] 1 Q. B. 161; 42 Digest 946, 188; *Truss v. Olivier* (1924), 40 T. L. R. 588; 42 Digest 950, 238.

(*d*) *Ex parte Simpkin* (1859), 2 E. & E. 392; 42 Digest 950, 327; *Peacock v. R.* (1858), 4 C. B. (N. S.) 264; 42 Digest 959, 326; *Wynne v. Ronaldson* (1865), 12 L. T. 711; 42 Digest 960, 337; *Dechène v. Montreal City*, [1894] A. C. 640, P. C.; 42 Digest 950, *q*.

(*e*) *R. v. Middlesex JJ.* (1848), 5 Dow. & L. 580; 42 Digest 943, 163; *Milch v. Frankau & Co.*, [1909] 2 K. B. 100; 34 Digest 535, 86 (annotations).

(*f*) 10 Statutes 651.

(*g*) 26 Statutes 462.

(*h*) *Ibid.*, 478.

disregarded in computing any kind of time for the purposes of the Second Schedule, and not to be treated as a day for the purpose of any proceedings under that Schedule. [994]

It will be noticed that the above provisions of the Act of 1933 depart from sect. 230 of the Municipal Corpn. Act, 1882, in not requiring Easter Tuesday to be disregarded, and that the provision requiring any of the days specially mentioned to be disregarded in computing a period of time applies only to the purposes of the Second Schedule to the Act relating to elections of county councillors or borough councillors. Further, these special days are to be disregarded even where the period which is being reckoned exceeds seven days. Sect. 230 (3) of the Act of 1882 authorises this course only where that period does not exceed seven days. [995]

See also Rules of Supreme Court, 1883, Order LXIV., r. 2, and Municipal Election Petitions, General Rules, dated April 17, 1883, r. xxxvii. (i). [996]

(i) S.R. & O. Rev., 1904, p. 686.

CONCERTS

See ENTERTAINMENTS, PROVISION OF; SUNDAY ENTERTAINMENTS.

CONDEMNED PROPERTY

See INSANITARY HOUSES; SLUM CLEARANCE.

CONDENSED MILK

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See also titles :

ADULTERATION OF FOOD ;
FOOD AND DRUGS ;
FOOD AND DRUGS AUTHORITIES ;

INSPECTORS OF FOOD AND DRUGS ;
PRESERVATIVES ;
SAMPLING OF FOOD AND DRUGS.

Introductory.—Milk normally contains about 88 per cent. of water. When water is expelled by heat, the milk which remains may be “evaporated,” “condensed” or “dried” milk. Evaporated milk is not defined in any statute, but is commonly understood to be milk still in liquid form and containing about 8 per cent. of fat. Condensed milk is thicker and more solid, and sometimes contains added sugar.

The percentage of fat must be at least 9 (a). Dried milk, which means milk which has been concentrated to the form of powder or solid by the removal of water, if made from whole milk, must contain at least 26 per cent. of fat (b). None of these articles is "milk" within the meaning of the Statutes and Orders by which the production, handling and sale of milk are regulated; and consequently special provisions have been included in two sets of Regulations made under the P.H. Acts, applying to condensed milk (including evaporated milk) (a), and dried milk (b) respectively.

Dried milk may be made from whole milk, partly skimmed milk, or skimmed milk; and the provisions of the Public Health (Dried Milk) Regulations (b) apply to all these varieties, and also to the dried milk contained in any powder or solid substance of which not less than 70 per cent. consists of dried milk.

The Condensed Milk Regulations and the Dried Milk Regulations are in many respects similar. They prescribe standards of composition and elaborate methods of labelling; and, except in so far as they apply to importation, are to be enforced by Food and Drugs Authorities (c), whose officers are empowered to enter premises, inspect processes, demand information, inspect books, and procure samples for analysis. So far as the Regulations apply to the importation of condensed milk, they are to be enforced by officers of the Customs and Excise.

Samples should ordinarily be divided into three parts and otherwise dealt with as under the Food and Drugs (Adulteration) Act, 1928 (d), which has superseded the Sale of Food and Drugs Acts, 1875 to 1907, referred to in the Regulations. The certificate of a public analyst is sufficient evidence, unless the defendant requires the analyst to be called as a witness. [997]

Standards of Composition.—The standards of composition which apply are as under :

Description of Condensed Milk					Percentage of milk fat (at least)	Percentage of all milk solids including fat (at least)	
1.	Full cream,	unsweetened	-	-	-	9.0	31.0
2.	Full cream,	sweetened	-	-	-	9.0	31.0
3.	Skimmed,	unsweetened	-	-	-	—	20.0
4.	Skimmed,	sweetened	-	-	-	—	26.0

Description of Dried Milk							Percentage of milk fat (at least)
1.	Full cream	-	-	-	-	-	26
2.	Threequarter cream	-	-	-	-	-	20
3.	Half cream	-	-	-	-	-	14
4.	Quarter cream	-	-	-	-	-	8

[998]

(a) Public Health (Condensed Milk) Regulations (S.R. & O., 1923, No. 509, and 1927, No. 1092).

(b) Public Health (Dried Milk) Regulations (S.R. & O., 1923, No. 1323, and 1927, No. 1093).

(c) Defined by s. 13 of the Food and Drugs (Adulteration) Act, 1928; 8 Statutes 893.

(d) S. 18; 8 Statutes 896.

Labelling.—Condensed or dried milk made from skimmed milk must be labelled in the prescribed manner, one of the requirements being that the receptacles must bear, in prominent type of at least $\frac{1}{4}$ -inch in height, the words “unfit for babies.” Dried milk made from partly skimmed milk must bear the words “should not be used for babies except under medical advice.” If sugar has been added the word “sweetened” must appear on the label. Dried milk to which a constituent of milk has been added must be labelled with the word “modified”; and dried milk to which any other substance has been added must be described as “compounded.” Labels on all receptacles of condensed and dried milk, whether made from whole milk or skimmed milk, must declare the quantity of milk or skimmed milk to which the contents of the receptacle are equivalent. Comments and explanations on labels are forbidden. The name and address of the manufacturer, or the merchant in the United Kingdom for whom the article is manufactured, must in all cases appear on labels.

If a local authority finds that condensed or dried milk intended for sale is deposited within their district and does not comply with the regulations, they must try to ascertain where it was manufactured and labelled. If they learn that it was manufactured or labelled in England or Wales they must communicate with the local authority concerned; otherwise they must report the facts to the Minister of Health.

Some of the requirements as to labelling do not apply to tins of dried milk whose gross weight exceeds 10 lbs. or to tins of condensed milk whose gross weight exceeds 5 lbs.

In addition to the Regulations mentioned above it has for long been necessary that every receptacle containing condensed separated or skimmed milk should be clearly and legibly labelled in large type with the words “machine-skimmed milk” or “skimmed milk” as the case may require (*e*). This requirement does not apply to ordinary separated or skimmed milk, but only to milk which has been condensed as well as deprived of some of its fat (*f*). Similar labelling requirements apply to the importation of condensed separated and condensed skimmed milk (*g*). [999]

Offences and Penalties.—The Regulations require that condensed milk and dried milk intended for human consumption shall be of the prescribed composition and shall be labelled in the prescribed manner when they are sold, exposed for sale or deposited in any place for the purpose of sale, dispatch or delivery to a purchaser. There is an exception with respect to the labelling of condensed milk sold at a public refreshment-house or shop for consumption on the premises. An offence is committed if any person “wilfully” neglects or refuses to obey the Regulations, and the penalty may be as much as £100 (*h*). Wilful neglect must be something more than a mere oversight, but if there has been more than a mere oversight it is open to the magistrate to convict (*i*). A local authority may prefer to institute proceedings under sect. 2 of the Food and Drugs (Adulteration) Act, 1928 (*k*), when condensed milk or dried milk not of the composition prescribed by the

(*e*) Milk and Dairies (Consolidation) Act, 1915, s. 7; 8 Statutes 868.

(*f*) *French v. Card* (1909), 101 L. T. 428; 25 Digest 73, 25.

(*g*) Food and Drugs (Adulteration) Act, 1928, s. 12 (1); 8 Statutes 891.

(*h*) P.H.A., 1896, s. 1 (3); 13 Statutes 872.

(*i*) *Per Hawke, J.*, in *Twynham v. Badcock*, [1932] 2 K. B. 549; Digest (Supp.).

(*k*) 8 Statutes 885.

Regulations is sold; and in such proceedings no question will arise as to whether the offence (of selling an article not of the nature demanded) was wilfully committed. [1000]

London.—The two codes of Regulations already mentioned extend to London, and are enforced in the City of London by the Common Council, and in a metropolitan borough by the borough council; see the definitions of "local authority" in regulation 2 (1) of each code, and sects. 13, 15 of the Food and Drugs (Adulteration) Act, 1928 (*l*). [1001]

(*l*) 8 Statutes 893, 894.

CONFERENCES

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See also title : ASSOCIATIONS.

1. Types of Conferences.—Conferences relating to the work and activities of local authorities are of four principal types, namely :

- (1) Those held by Associations of Local Authorities such as the Association of Municipal Corps., the County Councils Association, the Urban District Councils Association, etc., and conferences convened by a Government department, at which the attendance of local authorities is invited.
- (2) Conferences promoted by Associations concerned with a particular field of Local Government or Public Administration, such as the Institute of Municipal Treasurers and Accountants, the National Housing and Town Planning Council, the Royal Sanitary Institute, etc.
- (3) Conferences between the members of neighbouring borough and district councils, with the possible addition of members of the county council, convened for the purpose of discussing some scheme in which they are jointly interested such as a joint hospital scheme, or a joint sewerage or water scheme.
- (4) Conferences held by statutory bodies, such as county valuation committees, with a view to securing uniformity of practice in relation to particular spheres of local government administration.

It is the practice of most associations of standing which are concerned with local government and cognate matters to hold an annual conference. [1002]

2. Attendance at Conferences.—In the case of conferences held by Associations of Local Authorities, those councils which are members of the Association usually appoint annually one or more members representatives on the Association, and these persons will naturally represent the council at the annual conference of the Association. In the second class of conference above referred to, if the council should decide to send delegates, the chairman of the committee and the chief officer, who are most directly concerned with the subject-matter of the conference, are usually selected for the purpose. For example, to a conference of the Institute of Municipal Treasurers and Accountants it is the usual practice to send as delegates the chairman of the finance committee and the borough treasurer; to a conference of the Royal Institute of Public Health, the chairman of the public health committee and the M.O.H.; to a conference of the Institute of Municipal and County Engineers, the chairman of the highway committee and the borough engineer; and to that of the Incorporated Municipal Electrical Association, the chairman of the electricity committee and the borough electrical engineer.

The date and venue of an annual conference are usually fixed a considerable time before it is held, and local authorities are informed of the papers to be read and the subjects to be discussed at the conference, and invited to appoint delegates.

The papers to be discussed at a conference are usually circulated in advance and are frequently taken as read. After a discussion on a paper has taken place, the writer of the paper usually replies to comments and criticisms made. In many Associations, it is the practice for a report embodying the papers and the discussions thereon to be printed and circulated among the delegates. [1003]

3. Conferences within the L.G.A., 1933.—By sect. 267 of the L.G.A., 1933 (a), the council of a county, borough or district are empowered to pay any reasonable expenses incurred by their members or officers, or by members or officers of any of their committees, in attending a conference or meeting convened by one or more local authorities for the purpose of discussing any matter connected with the discharge of the functions of the authority. They may also pay any reasonable expenses incurred in purchasing reports of the proceedings of any such conference or meeting. The power conferred by this section is not to affect the provisions of any other enactment for the time being in force authorising payment of expenses incurred by members or officers of a local authority in attending any conference or meeting, nor does it authorise a local authority to defray any expenses to which such enactment applies, except in accordance with the provisions of that enactment (b).

In the report of the Committee on Local Expenditure (c) reference is made to the subject of conferences in paras. 265 and 266. The committee expresses the view that the number of conferences now held is altogether too large, that some of them cover the same ground and

(a) 26 Statutes 448.

(b) The travelling expenses of members of local authorities in the execution of their ordinary duties within their districts are not payable out of the rates (*R. v. Dolby* (1902), 66 J. P. 521; 33 Digest 41, 221). Express power is, however, given to county councils by s. 294 of the L.G.A., 1933 (26 Statutes 462), to pay the travelling expenses of members of the council or of certain committees in the execution of their duties.

(c) Cmd. 4200.

some take place at unnecessarily frequent intervals, and that in the case of conferences called by the Associations of Local Authorities (as distinct from their annual meetings and conferences) the representation of each local authority should be limited to two delegates. [1004]

4. **Regulations under Act of 1933.**—The cases in which and the conditions subject to which expenses may be defrayed by local authorities under sect. 267 of the Act of 1933 are to be prescribed by regulations made by the M. of H. (d). These will be found in the L.G. (Conferences) Regulations, 1934 (e), and restrict the power conferred by the section to :

(1) the annual conferences of the Association of Municipal Corps., the Urban and Rural District Councils Associations, the periodical meeting of the Public Assistance Conference, and any meeting of the council of any of the said Associations or the Public Assistance Conference ; and

(2) any other conference or meeting convened by one or more local authorities or by any association of local authorities to discuss any matter connected with the discharge of their functions.

The expenses of a member or officer of a county, borough or district council cannot be paid by the council, unless his attendance at the meeting or conference is authorised by them (Art. 3 (i.)). The expenses of more than three members at a conference or meeting such as that described in para. (1) above cannot be paid by the council, or the expenses of more than two members at a conference or meeting of the kind described in para. (2) above (Art. 3 (ii.) and (iii.)). It will be seen that the number of officers whose expenses can be repaid is not restricted.

The reasonable cost of purchasing reports of the proceedings of any conference or meeting, the expenses of attending which may be defrayed by the council under the regulations, may be incurred by the council under Art. 4 of the Regulations.

As respects the third class of conference referred to on p. 466, *ante*, if the joint meeting has been convened by a county, borough or district council the reasonable expenses incurred by members and officers attending it may be defrayed under sect. 267 of the L.G.A., 1933 (f), and Art. 2 (ii.) of the regulations made thereunder, but the expenses of more than two members cannot be so defrayed. In the circular covering the regulations (g) it was suggested that the Minister's sanction under the proviso to sect. 228 (1) of the Act of 1933 (h), which has replaced the Local Authorities (Expenses) Act, 1887 (i), would be needed, if the conference was not convened by such a council as that above mentioned. But cases may arise of joint meetings of members of local authorities to discuss a scheme, for which no action in the shape of convening a conference has been taken, and it might be possible to hold that the attendance of the members was outside their ordinary duties as members, and was not governed by the case of *R. v. Dolby* (k). On this view, actual travelling expenses and subsistence allowance, if the meeting be held outside the county, borough or district which the member represents, might be repaid by the council without a sanction on the part of the Minister. [1005]

(d) See the definition of "prescribed" in sect. 305 of the Act.

(e) S.R. & O., 1934, No. 690.

(f) 26 Statutes 448.

(g) Circular 1424 of July 10, 1934.

(h) 26 Statutes 429.

(i) 10 Statutes 686. Repealed (including London) by the L.G.A., 1933.

(k) See footnote (b), *ante*, p. 467.

5. **Other Enactments as to Conferences.**—The Public Health and Local Government Conferences Act, 1885 (*l*), and sect. 114 of the Poor Law Act, 1930 (*m*), relating to poor law conferences, are repealed by the L.G.A., 1933, but other enactments not repealed, which are saved by sect. 267 of the Act of 1933, are the County Councils Association Expenses Act, 1890 (*n*), which authorises a county council to pay the reasonable expenses of the attendance of their representatives, not exceeding in any case four, at meetings of the County Councils Association, and sect. 126 of the Education Act, 1921 (*o*), as to the expenses of the attendance of representatives of councils having powers under that Act at educational conferences. [1006]

Another power saved is that in sect. 30 of the Electricity (Supply) Act, 1919 (*p*), which allows joint electricity authorities or authorised undertakers to pay the reasonable expenses of attendance of their members or officers at meetings or conferences of an electricity association. The consent of the Electricity Commissioners must be obtained, and any such payment made out of the revenue of the undertaking. [1007]

By sect. 18 (2) of the R. & V.A., 1925 (*q*), county valuation committees are empowered for promoting uniformity in the principles and practice of valuation and assisting rating authorities and assessment committees in the performance of their functions to hold conferences with persons representing assessment committees, either alone or in conjunction with other county valuation committees. By sect. 53 (2) of the same Act (*r*) an assessment committee may repay to any of their members any travelling and subsistence expenses reasonably incurred in so attending, and a county valuation committee may make similar repayments to those of their members who are members of the county council. These enactments are also saved by the proviso to sect. 267 of the L.G.A., 1933 (*s*). [1008]

6. **Powers of Parish Councils.**—It will be noticed that sect. 267 of the L.G.A., 1933, does not extend to a parish council. Apparently it is intended that where a parish council wish to send delegates to a conference, an application should be made by the council to the M. of H. for his sanction to the expenditure under the proviso to sect. 228 (1) of the Act of 1933 (*t*) which replaces the Local Authorities (Expenses) Act, 1887 (*u*). If this be given, the expenses sanctioned cannot be disallowed by the district auditor.

On the other hand, if parish councils are interested in the furtherance of some scheme which could lawfully be carried into effect by a joint committee of parish councils, or of parish and district councils, each of the parish councils concerned would seem to have an implied power of repaying the reasonable expenses of their members in attending a conference of members of such councils, held outside the parish, for the purpose of discussing the proposal, and a sanction of the Minister would not be necessary. [1009]

(*l*) 13 Statutes 805.

(*m*) 12 Statutes 1030. This repeal does not extend to London.

(*n*) 10 Statutes 772.

(*o*) 7 Statutes 197.

(*p*) *Ibid.*, 773.

(*q*) 14 Statutes 643.

(*r*) *Ibid.*, 676.

(*s*) 26 Statutes 448.

(*t*) *Ibid.*, 429.

(*u*) 10 Statutes 686. Repealed (including London) by the L.G.A., 1933.

7. Scale of Expenses.—It will be seen that the new regulations under the Act of 1933 do not prescribe a scale of expenses to be allowed to delegates attending conferences, but most local authorities adopt such a scale. A typical scale is as follows :

- (a) Members of the council and chief officers—first-class railway fare and actual expenses not exceeding 25s. a day.
- (b) Officers other than chief officers—third-class railway fare and actual expenses not exceeding 20s. a day. [1010]

8. Reception.—Where an annual conference of an Association is held at a particular place it is customary for the mayor or chairman of the council to give an official reception attended by the delegates (see title MUNICIPAL HOSPITALITY). [1011]

CONSECRATION

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See also titles : BURIALS AND BURIAL GROUNDS ;
CEMETERIES ;
CREMATION.

Burial Grounds and Cemeteries of Local Authorities.—The burial authority for any burial ground and any local authority maintaining a cemetery under the P.H. (Interments) Act, 1879 (*a*), may, if they think fit, apply to the bishop to consecrate any portion of the burial ground or cemetery approved in that behalf by the Secretary of State (*b*).

In framing the application to the Home Secretary for his approval to a consecration, reference should be made to the H.O. directions in their circular to burial authorities dated January 1, 1901, paras. 4 and 5 (*c*). [1012]

If a portion of a burial ground or cemetery is consecrated by mistake without the approval of the Home Secretary having been obtained,

(a) 18 Statutes 796.

(b) Burial Act, 1900, s. 1 (1); 2 Statutes 248. The expression "burial authority" means any burial board, any council, committee, or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the P.H. (Interments) Act, 1879, or under any local Act (s. 11; 2 Statutes 252).

(c) See pp. 695, 696 of Brooke Little's Law of Burials, 3rd ed. For form of application, see 2 Ency. Forms (2nd ed.), p. 609. For form of petition to the bishop, see *ibid*, p. 611.

such portion is none the less consecrated ground (*d*). If a burial authority do not make application for consecration within a reasonable time after having been requested so to do by residents of their district, and the Secretary of State is satisfied that a reasonable number of persons for whom, or within the area for which, the burial ground or cemetery is provided desire that a portion of it be consecrated, and that the consecration fees have been paid or reasonably secured, the Secretary of State may make an application to the bishop in respect of an approved portion of the burial ground or cemetery and the bishop may consecrate accordingly. In such circumstances it is the duty of the burial authority to make such arrangements as may be necessary for the consecration (*e*). It would not appear to be the duty of the burial authority to pay or arrange for the payment of the consecration fees, or to refund the amount of such fees to a person who had paid them. [1013]

The Home Secretary may, if he thinks fit, appoint a person to inquire into any matter relating to the consecration of any part of a burial ground (*f*), and may make such orders as he thinks just as to the payment by the burial authority or other parties of the whole or any part of the costs of the inquiry, and by such order may direct payment to be made to the Exchequer or to other parties and such order may be enforced as if it were an order of the High Court. The Secretary of State may assign to any person appointed to make any such inquiry remuneration not exceeding £5 5s. per day and a suitable allowance for expenses (*g*). [1014]

The bishop of the diocese is not bound to consecrate a portion of the burial ground on the application of a burial authority, but if, on such an application being made the bishop refuses to consecrate, an appeal lies to the archbishop (*h*). If, however, an application by a local authority to the bishop to consecrate a portion of a cemetery provided under the P.H. (Interments) Act, 1879, is refused by the bishop, no such appeal lies.

If on appeal to the archbishop he should decide that the burial ground is not in a fit and proper condition for the purpose of interments according to the rites of the Church of England, the burial authority must put the burial ground into a fit and proper condition. If the archbishop should decide that the burial ground is in a fit and proper condition and ought to be consecrated, his decision is to be communicated in writing by the archbishop to the bishop, and if the latter does not within one calendar month consecrate the ground, the archbishop must, under his hand and seal, license the ground for interments according to the rites of the Church of England (*h*). This licence, until the burial ground is consecrated, makes lawful the use of the burial ground as if it had been consecrated (*h*). [1015]

In any burial ground provided under the Burial Acts, 1852 to 1906, respecting which the Home Secretary certifies that the necessary provisions have been complied with, incumbents or their curates or chaplains may bury therein prior to the decision of the bishop or archbishop upon the application for consecration (*i*).

(*d*) *Williams v. Briton Ferry Burial Board*, [1905] 2 K. B. 565; 7 Digest 544, 236.

(*e*) Burial Act, 1900, s. 1 (2); 2 Statutes 248.

(*f*) S. 5 (1); *ibid.*, 251.

(*g*) S. 5; *ibid.*, 251.

(*h*) Burial Act, 1857, s. 12; 2 Statutes 232, as in part repealed by the Burial Act, 1900, s. 12; 2 Statutes 252.

(*i*) S. 18; *ibid.*, 233.

The provisions above referred to as necessary to be complied with, include the absence of objection on sanitary grounds, the making of proper arrangements for facilitating burials (*k*), the performance of burials at more than 100 yards from a dwelling-house (*l*) and applying to the bishop for consecration (*m*). [1016]

Notwithstanding the consecration of a burial ground or cemetery, burials may take place therein without the observance of the rites of the Church of England (*n*), including the burial of a person against whom a verdict of *felo de se* has been returned (*o*). [1017]

Cemeteries of Companies.—Sect. 1 of the Burial Act, 1900 (*p*), does not extend to a cemetery provided by a cemetery company, and the position as to consecration is still governed by sect. 23 of the Cemeteries Clauses Act, 1847 (*q*), assuming that no variation of that provision has been made by the company's special Act. This section authorises the bishop, on the application of the company, to consecrate any portion of the cemetery, if he be satisfied with the title of the company to that portion, and thinks fit to consecrate it.

But, as already pointed out, there is no appeal to the archbishop against a refusal of the bishop to consecrate. Moreover, the Act does not require the company to apply to the bishop for consecration, nor can the company be compelled to make an application. [1018]

Chapels at Burial Grounds and Cemeteries of Local Authorities.—A burial board or a local authority are not now empowered to expend money on the erection of a Church of England chapel on the consecrated portion of a burial ground or cemetery, but they may, at the request and cost of the residents in the district, erect, furnish and maintain such a chapel (*r*).

The provisions enabling a burial authority to build and maintain such a chapel (*s*) were repealed or modified by the Burial Act, 1900 (*t*). Chapels built on the consecrated portions of burial grounds before the passing of that Act were and still remain, in effect, substitutes for the parish church for the purposes of burials in the burial ground according to the rites of the Church of England (*u*). This is the effect of the sections of the Burial Acts of 1852 and 1853 already cited. It has been suggested that the same conditions prevail in the case of a chapel built after the passing of the Burial Act, 1900, at the request and cost of residents of the district (see Brooke Little on Burials, 3rd ed., p. 153).

The tolling of a bell at a burial is part of the burial rites of the Church of England, and the parish sexton is accordingly entitled to toll the bell in a chapel on the consecrated portion of a burial ground. [1019]

(*k*) Burial Act, 1852, s. 25; 2 Statutes 198.

(*l*) Burial Act, 1855, s. 9; *ibid.*, 221.

(*m*) Burial Act, 1900, s. 1; *ibid.*, 248.

(*n*) Burial Laws Amendment Act, 1880; *ibid.*, 242.

(*o*) Interments (*felo de se*) Act, 1882; *ibid.*, 277.

(*p*) 2 Statutes 248.

(*q*) *Ibid.*, 261.

(*r*) Burial Act, 1900, s. 2 (2); 2 Statutes 248.

(*s*) Burial Act, 1852, ss. 30, 32; 2 Statutes 200, 201; Burial Act, 1853, s. 7; 2 Statutes 218; Cemeteries Clauses Act, 1847, s. 25; 2 Statutes 261; P.H. (Interments) Act, 1879, s. 2; 13 Statutes 796.

(*t*) Ss. 2, 12; 2 Statutes 248. See, hereon, Reports of Select Committee on Burial Grounds, 1897 (Cmd. 312) and 1898 (Cmd. 322).

(*u*) *St. Margaret's, Rochester Burial Board v. Thompson* (1871), L. R. 6 C. P. 445; 7 Digest 544, 237.

A general chapel may, however, under sect. 2 (1) of the Burial Act, 1900 (*a*), be erected by a burial board or local authority in any part of the burial ground or cemetery which is not consecrated or set apart for the exclusive use of a particular denomination. But any such chapel so erected after July 10, 1900, must not be consecrated or reserved for the exclusive use of any denomination (*b*).

At the request and at the cost of the residents within their district belonging to any particular denomination, a burial board or local authority may erect, furnish and maintain a chapel for funeral services according to the rites of that denomination on the ground appropriated to their use (*c*).

As to the appeal to the Home Secretary on the refusal or neglect of the burial authority or local authority to accede to such a request, see the title CEMETERIES, at p. 473 of Vol. II. [1020]

Chapel at Cemetery of Company.—The Burial Act, 1900, does not extend to a cemetery provided by a cemetery company. Under sect. 11 of the Cemeteries Clauses Act, 1847 (*d*), the company, upon any land which they are authorised to use for the cemetery, may build such chapels for the performance of the burial service as they think fit. By sect. 25 of the Act (*e*) the company are required to build, within the consecrated part of the cemetery, and according to a plan approved of by the bishop, a chapel for the performance of the burial rites according to the rites of the Established Church. But this requirement would hold good only if a part of the cemetery had been consecrated, and it has already been pointed out that the company are not obliged to apply for the consecration of a part of their cemetery.

It is possible, however, that the provisions above mentioned may have been varied by the special Act of the company. [1021]

Burial Grounds for Poor Persons.—Where a county or county borough council have with the consent of the M. of H. appropriated land in their possession for the burial of poor persons whom they are authorised or required to bury, the bishop of the diocese may, if he sees fit, consecrate the whole or part of such land for burial purposes (*f*).

The Consecration of Churchyards Act, 1867, empowers the bishop of the diocese, or a bishop lawfully appointed as his commissary, to sign an instrument at the churchyard or in the church to which it belongs declaring or recording the consecration of ground added to a churchyard without the presence of the chancellor or registrar of the diocese being necessary (*g*), and the Consecration of Churchyards Act, 1868, enacts that the provisions of the Act of 1867 shall apply to burial grounds attached or belonging to union houses in England and Wales (*h*). [1022]

For many years popular sentiment has been averse from the provision of special burial grounds at poor law institutions for persons who have been under the care of the poor law authority, and the provisions above mentioned are rarely, if ever, acted upon. [1023]

Burial Grounds for Mental Hospital Patients and Officers.—The visiting committee of a mental hospital may provide for the burial of patients dying in the hospital, and of officers and servants belonging to it, by appropriating land already belonging to them not exceeding two

(a) 2 Statutes 248.

(c) Burial Act, 1900, s. 2 (2); 2 Statutes 248.

(d) 2 Statutes 258.

(f) Burial Act, 1867, s. 6; 2 Statutes 229. As to the appropriation of land for burial of poor persons, see title BURIALS AND BURIAL GROUNDS, at p. 348 of Vol. II.

(g) S. 1; 6 Statutes 886.

(b) *Ibid*.

(e) *Ibid.*, 261.

(h) S. 2; *ibid.*, 891.

acres, or acquiring land not exceeding two acres for enlarging an existing burial ground or for providing a new burial ground (*i*). In all cases, the consent of the council by whom the visiting committee are appointed and of the M. of H. must be obtained. The visiting committee may procure the consecration of a new or enlarged burial ground (*k*). The incumbent of the parish in which such burial ground is situate is not entitled to charge a fee for the burial of any person therein who is interred there by direction of the visiting committee, whether the ground is consecrated or not (*l*). [1024]

Consecration Fees.—The Lord Chancellor and the two archbishops with the consent of the Treasury are empowered to settle tables of fees to be taken on the consecration of burial grounds (*m*).

Every such table of fees is to be submitted to the Privy Council and notice of the submission is to be gazetted. The table comes into force, if not previously disallowed by the Privy Council, at the expiration of three months from the publication of the notice of submission in the *London Gazette*. Every such table of fees allowed by the Privy Council is to be laid before Parliament (*m*).

An order was made by the Privy Council on October 6, 1908, approving a table which settled the following fees to be taken on the consecration of a cemetery or burial ground :

	£	s.	d.
Vicar-General, Chancellor, Archdeacon or Official — — —	2	2	0
Registrar or other Officer by usage performing the duty — —	6	6	0
Secretary of Archbishop or Bishop — — —	1	1	0
Apparitor — — — — —	1	1	0

The chancellor's fee includes the approval of plans, perusal of petitions and papers, settling the sentence and approval of the draft act. The registrar's fee includes the perusal of the deeds of conveyance, drawing and engrossing the petition, the sentence and the notarial act, attendance at the consecration and registering the deeds and act in the register book of the diocese. The secretary's fee includes inspection of plans and the correspondence prior to the papers being sent to the registry. The apparitor's fees include all necessary citations and attendance on the bishop at the consecration (*n*). [1025]

London.—The P.H. (Interments) Act, 1879 (*o*), does not extend to London, and it follows that so much of the preceding article as describes the law applying to a cemetery provided by a local authority under that Act is inapplicable to London.

Burial grounds provided by metropolitan borough councils are subject to the provisions of the Burial Acts, 1852 to 1906, and any such council have the powers and duties of a burial board, with the result that the Burial Act, 1900 (*p*), extends to them as a burial authority by reason of the definition of that expression in sect. 11 of that Act (*q*).

The Burial Acts, 1852 to 1906, are also in force in the City of London, but are modified in some few respects by the City of London Burial Act, 1857 (*r*), and the City of London Sewers Acts, 1848 and 1851. See pp. 225—227 of Brooke Little's *Law of Burials*, 3rd ed. [1026]

(*i*) Lunacy Act, 1890, s. 258 (1); 11 Statutes 104.

(*k*) *Ibid.*, s. 258 (2).

(*l*) *Ibid.*, s. 258 (3).

(*m*) The Ecclesiastical Fees Act, 1867, s. 1; 6 Statutes 889; applying the Pluralities Act, 1838, s. 131; 6 Statutes 422.

(*n*) S.R. & O., 1908, No. 879.

(*o*) 13 Statutes 796.

(*p*) 2 Statutes 248.

(*q*) 2 Statutes 252.

(*r*) *Ibid.*, 225.

CONSERVANCY AUTHORITIES

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See also titles : LAND DRAINAGE ;
LEE CONSERVATORS ;
THAMES CONSERVATORS.

Conservancy Authorities in General.—The appointment of Authorities for the Conservancy of Rivers is of considerable antiquity and mainly originates from the necessity of dealing with their navigation. In some instances, powers of control were conferred by Royal Charter, in other instances by statute.

As far back as 1503, in the reign of Henry VII., there was passed "An Act concerning the River Severn" (a) which was followed in 1531 by an Act of Henry VIII. entitled "An Act for taking exactions upon the Paths of the River Severn" (b). Again in the same year was passed "An Act for pulling down and avoiding of Fish-garths, Piles, Stakes, Hecks, and other Engines, set in the River and Water of Ouze and Humber" (c).

No doubt because navigation was the principal object in appointing controlling authorities of rivers we do not find the smaller rivers similarly dealt with.

In the early days of inland navigation not only did Parliament give powers to the controlling authorities of rivers to fix tolls for craft navigating the river, but also, in one instance at any rate, charges for the carriage of merchandise were authorised. Thus under the Thames Watermen Act of 1730 (d) the Commissioners were empowered to fix the rate of carriage to be taken by owners of barges. [1027]

River towing paths were sometimes not the property of the navigation. The towing path of the River Severn was originally constructed as a separate undertaking, the portions above and below Worcester being owned by two different independent companies. Similarly the "haling-ways" or towing paths of the Great Ouse River between Denver Sluice and King's Lynn were under the jurisdiction of the Ouse Haling-Ways Commissioners.

(a) 19 Henry 7, c. 18.
(c) 23 Henry 8, c. 18.

(b) 23 Henry 8, c. 12.
(d) 4 Geo. 2, c. 24.

Prior to the advent of mechanical haulage, bow-hauling, or haulage of vessels by men, was much practised. The bow-hauling interest must have been very strong, as we find clauses in Acts of Parliament enacting that barges on certain navigations, or portions of navigations, shall be "haled" by men only. Traffic on the River Trent was thus restricted until the year 1783 when two Acts of Parliament were passed (e) containing clauses which permitted horse haulage throughout the navigation from Burton to Gainsborough.

In a paper on the past and present conditions of the River Thames, read in 1856 before the Institution of Civil Engineers (f) by Mr. Henry Robinson, we read: "The traffic on the Upper Thames was in the last century principally conducted by large barges carrying as much as 200 tons each, and hauled against the stream by 12 or 14 horses, or 50 or 80 men; these men were usually of the worst possible character, and a terror to the whole neighbourhood of the river." [1028]

The functions of River Conservators vary considerably and may include: (1) the construction and maintenance of locks, weirs and works necessary for navigation; (2) levying of tolls on vessels; (3) regulation of the navigation; (4) registration and regulation of pleasure craft; (5) removal of sunken vessels and other obstructions from the river and towing paths, dredging and weed-cutting; (6) maintenance of buoys and beacons; (7) provision of wharves and quays; (8) establishment and maintenance of ferries; (9) appointment of water bailiffs for the protection of fisheries; (10) prevention of pollution; and (11) the making of bye-laws for various purposes. [1029]

Sects. 1, 5 and 40—42 of the Land Drainage Act, 1930 (g), make provision for the conferring on drainage boards (including catchment boards) of functions as to navigation. Under sect. 40 an arrangement with a navigation or conservancy authority made with the approval of the Minister of Agriculture and the Minister of Transport, by which some part of the undertaking or functions of the authority is transferred to the drainage board or under which the board is to alter the works of the authority or under which payments are to be made between the parties, shall have effect as if enacted in the Act while it remains in force. [1030]

By sect. 41 the Minister of Agriculture after consultation with the Minister of Transport may by order revoke, vary or amend any local Act relating to navigation rights over or functions of a navigation authority as to any waters within any drainage district, and may by the order extinguish, vary or suspend such rights or functions. If opposed, the order is not to be effective until confirmed by Parliament, and if it relates to tidal waters is not to be made in any case without the consent of the Board of Trade. The section is expressed as intended to deal with a case in which a navigation authority is not sufficiently exercising its powers and thus prejudicing the drainage of land. An application for such an order must be made by a drainage board (including a catchment board) within whose district the waters to which it relates are contained. [1031]

Sect. 42 provides that where navigable waters within a drainage district (including a catchment area) are not subject to the control of any navigation authority, harbour authority or conservancy authority the drainage board (which term includes a catchment board) may

(e) 23 Geo. 3, cc. 41, 48.

(f) Minutes of Proceedings Inst. C.E., Vol. 15, p. 198.

(g) 23 Statutes 529, 534, 558.

apply to the Minister of Transport for an order imposing tolls on navigation. Such an order may not be made unless the Minister of Transport is satisfied that the use of the waters for navigation will increase the cost of the maintenance of works. The order, if opposed, is ineffective until confirmed by Parliament. [1082]

Although many conservancy authorities are of long standing, it will be seen from what follows that they are regulated almost entirely by local Acts, and few additions to their powers have been made by general legislation. A general power of removing a wreck was, however, granted to harbour and conservancy authorities by sects. 530—534 of the Merchant Shipping Act, 1894 (*h*), where the vessel is in any harbour or tidal water under their control. The liability of harbour or conservancy authorities in respect of loss or damage to vessels or cargo is limited by sect. 2 of the Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (*i*). [1033]

Port authorities of this kind should not be confused with a port sanitary authority constituted to act as the sanitary authority over the waters of the port, by order of the M. of H. under sect. 287 of the P.H.A., 1875 (*k*), and sect. 3 of the P.H. (Ships, etc.) Act, 1885 (*l*). [1034]

It is difficult to obtain precise information as to the powers and duties of conservancy authorities, and in some instances to learn what authority is responsible for a particular reach of a river. It is hoped that the following statement, which deals with the principal rivers so regulated with the exception of the Thames and the Lee (see titles THAMES CONSERVATORS and LEE CONSERVATORS) and gives some details of their conservancy authorities, will be of service, particularly as references are given to the more important of the local Acts. [1035]

River Avon (Bristol).—The Port of Bristol Authority exercises jurisdiction over the River Avon from the tail of Hanham Lock, through the city of Bristol to the estuary of the River Severn at Avonmouth, a distance of a little over 14 miles. The Kennet and Avon Canal of the Great Western Rail. Co. forms a junction with the river at Hanham Lock.

The corpn. claim to have been the conservators of the port from time immemorial. Their powers have been extended from time to time, and in an Act of William III. (*m*) it is recited that the corpn. were already conservators of the River Avon from a certain point in the upper reaches of the river to the Holmes, and the Act extends the jurisdiction of the corpn. over a further section of the river up stream as far as Hanham Mills. The existing limits of the port over which the corpn. exercise their jurisdiction as conservators are set out in the Bristol Corpn. (No. 2) Act, 1930 (*n*), as follows :

“An area bounded on the south in part by an imaginary straight line drawn from Clevedon Pier Head to the north-eastern corner of Queen Alexandra Dock, Cardiff, on the north-west in part by an imaginary straight line drawn from Monkstone Lighthouse to Denny Island Beacon and thence to the point on Chittening Wharf in the county of Gloucester at which high-water mark of ordinary spring tides is intersected by the parallel of 51 degrees 32 minutes 30 seconds north, and on all other sides by a line extending from the last-mentioned point

(*h*) 18 Statutes 364—366.

(*k*) 13 Statutes 745.

(*m*) 11 & 12 Will. 3, c. 23.

(*i*) *Ibid.*, 444.

(*l*) *Ibid.*, 806.

(*n*) 20 & 21 Geo. 5, c. clxxx.

in a south-westerly direction along high-water mark of ordinary spring tides on the coast of the Counties of Gloucester and Somerset to Clevedon Pier Head and including also the river Avon up to Hanham Mills together with all other rivers and pills within the city and all islands, bays, harbours, rivers, creeks and canals included within the said lines."

The Bristol City Council appoint annually twelve of their members to regulate and manage their docks undertaking, and the conservancy of the port is under the control of the same committee.

The corpn. being both owners of the docks undertaking and conservators of the port deal with the following matters under powers conferred upon them as such, and no specific line of demarcation is observed, viz :

- Prevention and removal of encroachments and deposits ;
- Regulating the time and manner of vessels entering and leaving the port, and where they are to lie ;
- Removal of wrecks and other obstructions and dredging ;
- Lighting and marking the River Avon and the approach piers to the three dock systems ;
- Regulating the speed of vessels (River Avon) ;
- Licensing of tugs and regulation of towage rates and towage ;
- Licensing of boatmen and boats ;
- Regulating the navigation of vessels (River Avon) ;
- Regulating the loading and unloading of explosives, spirit, oil and carbide of calcium ;
- Various other duties.

The Conservancy Authority (o) also carry out hydrographic surveys of the River Avon and King Road, and an automatic tide gauge is maintained, together with four signal stations. The Authority publish tide tables. [1036]

River Bure or North River.—From Aylsham to a quarter of a mile below Coltishall Lock, a distance of $9\frac{1}{2}$ miles, the navigation, being a canal from Aylsham to Burgh and thence a river, is under the jurisdiction of the Aylsham Navigation Commissioners (p). The Commissioners were appointed by Act of Parliament of 1773 (q). This portion of the river has, however, not been navigable since the flood of 1912.

Leaving Coltishall the river proceeds by Wroxham and Horning to Yarmouth, where it flows into the River Yare at the eastern extremity of Breydon Water.

From Coltishall to the mouth of the river where it joins the River Yare, a distance of approximately 31 miles, the river is under the jurisdiction of the Norfolk (River Bure) Commissioners, who are a committee of the Great Yarmouth Port and Haven Commissioners (for whom see "River Yare"). [1037]

River Cam.—The River Cam Conservancy area comprises so much of the Rivers Cam and Granta as lies between (1) Newnham Mill, (2) the sluice gates adjoining or near to the northerly extremity of Sheep's Green (but not including those sluice gates), (3) King's Mill respectively on the west or south-west and Bottisham Locks (but not including those locks) on the east or north-east, together with the

(o) The office of their secretary is at Queen Square, Bristol.

(p) The office of their clerk is at Market Place, Aylsham, Norfolk.

(q) 13 Geo. 3, c. 37.

towing paths of and all backwaters connected with so much of the said rivers as aforesaid.

The Acts of Parliament governing the River Cam Conservancy Board (*r*) are the River Cam Navigation Act, 1851 (*s*), the River Cam Conservancy Act, 1922 (*t*), and the Cambridge Corp'n. Act, 1932 (*u*).

The Board consist of 13 members elected or appointed as follows :

- 7 by the Cambridge Borough Council ;
- 3 by the Council of the Senate of the University of Cambridge ;
- 2 by the River Great Ouse Catchment Board ;
- 1 by the Cambridgeshire County Council.

For the purpose of bye-laws for government, good order and the regulation of bathing and prevention of trespassing and nuisances, the jurisdiction of the Conservators extends over so much of the River Granta as lies between King's Mill and Newnham Mill on the east or north-east and Byron's Pool and Grantchester Mill on the west and south-west, together with all backwaters connected therewith.

Under their local Acts the Conservators exercise the powers of a navigation authority and also have powers in connection with the improvement of the rivers, tolls, licensing of piers, embankments, etc., erection of piers and landing places, establishment of ferries, etc.

The Conservators have made bye-laws under their statutory powers for the control of traffic, registration of pleasure boats, bathing, etc.

The River Great Ouse Catchment Board, the drainage authority for the area, have under the Land Drainage Act, 1930, delegated to the Conservators certain of their powers and duties over the portions of the Rivers Cam and Granta within the extended jurisdiction of the Conservators. [1038]

River Dee.—The river commences to be navigable at the Dee Bridge at Chester, and proceeds by Saltney, Sandycroft and Queensferry to Connah's Quay, where a wide estuary is formed.

From the Dee Bridge at Chester to an imaginary line drawn across the mouth of the estuary from the Old Lighthouse, Point of Air (Flintshire), to Hilbre Point (Cheshire), a distance of about 23 miles, the river and all streams, havens, creeks, bays and inlets within such limits are under the jurisdiction of the Dee Conservancy Board.

The Board was established under the Dee Conservancy Act, 1889 (*a*), and is constituted as follows :

- 3 "Riparian Conservators" (landowners).
- 3 "Traders Conservators" (elected by the traders).
- 6 "Shipowners Conservators" (elected by the shipowners).
- 1 by the Board of Trade.
- 6 by the Chester Corporation.
- 1 by the Wrexham Corporation.
- 1 by the Flint Corporation.
- 2 by the Great Western Rail. Co.
- 1 by the London, Midland and Scottish Rail. Co.
- 4 by the London and North Eastern Rail. Co.
- 2 by the Dee Company.
- 1 by the County Council of Chester.
- 1 by the County Council of Flint.
- 1 by the County Council of Denbigh.

(*r*) The address of their clerk is the Guildhall, Cambridge.

(*s*) 14 & 15 Vict. c. xcii.

(*u*) 22 & 23 Geo. 5, c. xxxv.

(*t*) 12 & 13 Geo. 5, c. lxxi.

(*a*) 52 & 53 Vict. c. clvi.

The Conservators (*b*), in addition to maintaining the navigation, provide buoys and beacons, and are also the harbour authority and the pilotage authority for the river, and have power to make bye-laws. [1039]

River Derwent.—The river is first navigable at Malton and proceeds by Castle Howard, Stamford Bridge and Sutton-upon-Derwent to Barmby-on-the-Marsh where it forms a junction with the tidal River Ouse, $6\frac{1}{2}$ miles below Selby, a total distance of about 38 miles.

The Derwent is canalised and vested in the London and North Eastern Rail. Co. (*c*); there is very little trade on it.

The River Derwent was made navigable under the River Derwent Navigation Act, 1702 (*d*). The navigation was acquired by the North Eastern Rail. Co. (as the owners of the Pocklington Canal, with which it communicates) under the powers of the Canal Carriers Act, 1845 (*e*), by a conveyance from Lord Fitzwilliam and his trustees, dated October 1, 1855. [1040]

River Humber.—The Humber Conservancy Board (*f*) as constituted by the Humber Conservancy Act, 1907 (*g*), consists of 37 members, who are appointed or elected as follows:

Appointed.

- 3 by the Ministry of Transport ;
- 6 by the Hull Trinity House ;
- 3 by the London and North Eastern Rail. Co. ;
- 1 by the London, Midland and Scottish Rail. Co. ;
- 1 by the Aire and Calder Navigation ;
- 1 by the Notts. and Lindsey County Councils ;
- 1 by the Hull Corporation ;
- 1 by the Grimsby Corporation ;
- 1 by the Goole U.D.C. ;
- 2 by the Hull Chamber of Commerce ;
- 2 by the Grimsby Chamber of Commerce ; and
- 2 by the Goole Chamber of Commerce.

Elected.

- 7 by the Hull shipowners ;
- 3 by the Grimsby shipowners ; and
- 3 by the Goole shipowners.

The Board are invested with the powers of a harbour, navigation, conservancy, pilotage and local lighthouse authority. Their jurisdiction extends over the whole of the River Humber from its confluence with the Ouse and Trent to the sea, a distance of about 40 miles, and the navigable havens and creeks of the Humber, and also over the River Trent up to Gainsborough, and, as regards pilotage, over the River Ouse up to Goole.

The Board's revenue is derived mainly from shipping dues, which are levied on the net register tonnage of vessels entering the Humber. Shipping dues are not charged on outward bound vessels. [1041]

(*b*) The office of their clerk is at 26, Nicholas Street, Chester.

(*c*) Letters should be addressed to the secretary, L. & N.E. Railway Co., Marylebone Station, London, N.W.1.

(*d*) 1 Anne, c. 14.

(*e*) 14 Statutes 88.

(*f*) The office of their secretary is at Whitefriargate, Hull.

(*g*) 7 Edw. 7, c. xcvi.

River Medway.—The river is first navigable at the Powder Mills at Leigh, about one mile above the town of Tonbridge, and proceeds by Maidstone, Rochester, Strood, Chatham and Port Victoria to Sheerness, where it forms a junction with the estuary of the River Thames, a distance of about 75 miles.

From the Powder Mills at Leigh to Old College Locks, Maidstone, opposite All Saints' Church, a distance of 16 miles, the river is under the jurisdiction, both as regards navigation and drainage, of the River Medway Catchment Board (*h*), this Board having superseded the now extinct Upper Medway Conservancy on April 1, 1934.

The River Medway Catchment Board consists of 22 members appointed as follows :

- 1 by the Minister of Agriculture and Fisheries ;
- 7 by the Minister of Agriculture and Fisheries, after taking into consideration nominations by the internal drainage boards whose districts are within the catchment area ;
- 12 by the County Council of Kent ;
- 1 by the County Council of Surrey ;
- 1 by the County Council of Sussex.

From Old College Locks, Maidstone, to Hawkwood, a distance of 6 miles, the river is under the jurisdiction of the Lower Medway Navigation Co. (*i*). This co., which is not a trading co., was constituted under local Acts of 1801 and 1824.

The committee of management must consist of not less than seven members ; at present there are eight, who are elected by the shareholders in annual meeting.

The co. has authority to charge tolls, and is under an obligation to keep the river banks and the fairway of the river fit for navigation.

From Hawkwood, near Burham, to Sheerness, a distance of about 18 miles, the river is under the control of the Conservators of the River Medway (*j*), who derive their powers from the Medway Conservancy Acts, 1881, 1919 and 1926 (*k*). The Rochester Corpn. also exercise control by virtue of a Royal Charter.

The Conservancy Board consists of 19 members elected or nominated as follows :

- 6 elected by the traders on the river who pay dues ;
- 6 nominated by the Rochester Corpn. ;
- 2 nominated by the Chatham Corpn. ;
- 2 nominated by the Gillingham Corpn. ;
- 1 nominated by the Lower Medway Navigation Co. ; and
- 2 nominated by the Admiralty.

The Board under the Acts have the usual conservancy powers including the licensing of wharves and buildings on the foreshore and the charging of dues. [1042]

River Mersey.—The portion of the River Mersey above Bank Quay, Warrington, forms part of the Mersey and Irwell Navigation of the Bridgewater Department of the Manchester Ship Canal Co. (*l*), and is now only navigable for small row boats.

(*h*) The office of their clerk is at 71a, Bank Street, Maidstone.

(*i*) The office of the clerk and solicitor is at 9, King Street, Maidstone.

(*j*) The office of their secretary is in High Street, Rochester.

(*k*) 44 & 45 Vict. c. clxiv., 9 & 10 Geo. 5, c. xxxviii., 16 & 17 Geo. 5, c. xxviii.

(*l*) Letters should be addressed to the Superintendent of the Bridgewater Department, Manchester Ship Canal Co., Chester Road, Manchester.

From Bank Quay, Warrington, to a line drawn across the river from Eastham to Garston, a distance of about 18½ miles, the river is under the jurisdiction of the Upper Mersey Navigation Commissioners (*m*). The Commission was created by the Upper Mersey Navigation Act, 1876 (*n*), and consists of 25 members appointed or elected as follows :

- 5 by the Manchester, St. Helens, Salford, Warrington and Widnes Corpn. ;
- 1 by the Runcorn U.D.C. ;
- 2 by the Manchester Ship Canal Co. as successors of the Company of Proprietors of the Mersey and Irwell Navigation and the Bridgewater Navigation Co., Ltd. ;
- 1 by the Cheshire Salt Chamber of Commerce ;
- 2 by the London, Midland and Scottish Rail. Co. ;
- 1 by the Mersey Docks and Harbour Board ;
- 1 by the owners of West Bank Dock ;
- 1 by the justices of the peace for the County of Chester ;
- 1 by the River Weaver Trustees ;
- 1 by the Lancashire and Cheshire Coal Association ; and
- 9 by traders using the Upper Mersey.

The Commission provide and maintain buoys, beacons, lighthouses and lights for effectually lighting and buoying the navigable channels of the Upper Mersey. For this purpose they are authorised by the Act of 1876 to levy dues on craft using the Upper Mersey.

Below a line drawn across the river from Eastham to Garston the river is under the jurisdiction of the Mersey Docks and Harbour Board (*o*).

Prior to the year 1857, the dock estate on the Liverpool side of the Mersey was under the control of a dock committee whose proceedings were subject to the approval of the Liverpool City Council as trustees of the Liverpool docks. The dock estate on the Birkenhead side of the river was owned by the Birkenhead Dock Co. until the year 1855 or 1856, when, through that body being unable to secure a profit, their undertaking was purchased by the Liverpool Corpn. The dock estates at Liverpool and Birkenhead were vested in the present Board by the Mersey Docks and Harbour Act, 1857 (*p*), and have since been controlled and managed by the Mersey Docks and Harbour Board.

The Board consists of 28 members of whom 24 are elected by persons paying dues, as provided by sect. 24 of the Mersey Dock Acts Consolidation Act, 1858 (*q*).

By sect. 8 of the Mersey Docks and Harbour Board Act, 1923 (*r*), a person to be qualified as an elective member of the Board must reside within the City or the Customs Port of Liverpool, or within 50 miles of the outward boundary of the said city or port, and under sect. 26 of the Consolidation Act of 1858 he must have paid to the Board within the year immediately preceding his election, dues in respect of ships or goods of not less than £25. The other four members are appointed by the Conservancy Commissioners of the River Mersey,

(*m*) The office of their clerk is at Runcorn, Cheshire.

(*n*) 39 & 40 Vict. c. civ.

(*o*) Letters should be addressed to the General Manager and Secretary, Pierhead, Liverpool.

(*p*) 20 & 21 Vict. c. clxii.

(*q*) 21 & 22 Vict. c. xcii.

(*r*) 13 & 14 Geo. 5, c. xxiii.

whose powers are now exercised by the Minister of Transport under the Ministry of Transport Act, 1919 (s).

The members receive no remuneration. Each member is elected or appointed for a term of four years.

In addition to the general control of the river and the Liverpool and Birkenhead Docks, the Board have under their jurisdiction the system of lighting and buoying the river and approach channels, and are also the pilotage authority for the Liverpool Pilotage District.

From the Gladstone Graving Dock at the north end of Liverpool to the Herculaneum Dock at the south, a length of about $6\frac{1}{2}$ miles, a system of docks and basins adjoins the river, having a water area of about 475 acres and quays of about 29 miles long, of every type and variety, from the accommodation necessary for the ever increasing size of Atlantic liners to the lesser requirements of the small coaster. On the opposite side of the river, the Birkenhead docks, having a water area of about 172 acres and over 9 miles of quays, form a part of the whole Mersey system. [1043]

River Nene.—The navigation of the River Nene commences at Northampton where a junction is formed with the Northampton branch of the Grand Union Canal.

Leaving Northampton, the river proceeds by Wellingborough, Irthlingborough, Thrapston, Oundle and Wansford to Peterborough, a total distance of 60 miles. This portion of the river both as regards drainage and navigation is under the jurisdiction of the River Nene Catchment Board (t), constituted under the Land Drainage Act, 1930.

The jurisdiction of the Catchment Board also extends above Northampton to Kislingbury and Chapel Brampton. This portion of the river is not navigable.

From Peterborough Bridge to Bevis Hall, $2\frac{1}{2}$ miles above Wisbech town bridge, a further distance of 17 miles, the navigation is under the jurisdiction of the Nene Navigation Commissioners—3rd Division (u), constituted by the Nene Valley Drainage and Navigation Improvement Act, 1852 (a).

The Board consists of 12 members who are elected by the Wisbech and Peterborough Corpn., the Wisbech Court of Sewers, the Nene Wash Lands Commissioners, the Waldersey Drainage Board and the North Level Commissioners.

From Bevis Hall to the Wisbech Bar Buoy, an approximate distance of $16\frac{1}{2}$ miles, the river is under the jurisdiction of the Wisbech Corpn., who are the port and harbour authority for that portion of the river. The limits of the port and harbour authority are defined by the Wisbech Town Act, 1810 (b), the corpn. having power to collect dues, make works in the port and harbour, provide buoys, beacons, moorings, etc., and to remove wrecks. The corpn. have also power to make bye-laws. [1044]

River Ouse (Great).—The navigation rights of the river between Bedford and Brampton Lock, a distance of 23 miles, are private property, the proprietor being Mr. L. T. Simpson of Slindon, Sussex,

(s) S. 2; 3 Statutes 422; and M. of T. (Commissioners for the Conservancy of the River Mersey, Transfer of Powers) Order, 1919, S.R. & O., 1919, No. 1938.

(t) The office of the clerk is at 4, New Street, Oundle, Northants.

(u) Letters should be addressed to the clerk at 18, Lower Hill Street, Wisbech, Cambs.

(a) 15 & 16 Vict. c. cxxviii.

(b) 50 Geo. 3, c. ccvi.

who purchased these rights in 1893, together with the stretch of the river from Brampton Lock to Holywell, since transferred to the Great Ouse Catchment Board.

At the time of purchase, the various locks and weirs were in a ruinous condition and the river channel was greatly silted up.

The navigation was reopened to St. Neots in the autumn of 1893, and through to Bedford in the summer of 1895 in which year the proprietor also commenced to act as a carrier.

In July, 1897, the House of Lords decided (c) that the Godmanchester Corpn. had a right in time of flood to force open the gates of three of the locks and use the locks as flood discharging channels. In face of this decision, the proprietor ceased to act as a carrier and closed the navigation in September, 1897.

From Brampton Lock to the termination of the Eau Brink Cut, a further distance of 48 miles, the river is under the control of the Great Ouse Catchment Board (d), which was constituted under the Land Drainage Act, 1930 (e).

The Catchment Board have also taken over the duties of the Ouse Haling Ways Commissioners, who were responsible for keeping up the towing path of the main river from King's Lynn to Denver Sluice.

The Catchment Board consists of 31 members appointed as follows :

- 1 by the Minister of Agriculture and Fisheries ;
- 20 by the councils of the counties whose area, or any part of whose area, is situated within the catchment area ; and
- 10 by the Minister of Agriculture and Fisheries, after consultation with, and after taking into consideration nominations by the internal drainage boards whose districts are within the catchment area, to represent those boards and that portion of the catchment area for which drainage boards might be, but have not been, constituted.

From the termination of the Eau Brink Cut below the Free Bridge to the mouth of the river, a distance of about 3½ miles, the river is under the control of the King's Lynn Conservancy Board (f), which was constituted by the King's Lynn Conservancy Act, 1897 (g).

The Conservancy Board consist of 27 members as follows :

- 1 the mayor of King's Lynn for the time being ;
- 8 appointed by the King's Lynn Corpn. ;
- 6 appointed by the Select Trustees ;
- 2 appointed by the Board of Trade ;
- 2 appointed by the King's Lynn Docks and Rail. Co. ; and
- 8 elected by shipowners and by merchants.

In addition to their powers and functions as conservators, the Board are the pilotage authority for this district under the King's Lynn Pilotage Order, 1922 (h), and the Pilotage Act, 1913 (i). [1045]

River Ouse (York).—The river is formed by the confluence of the rivers Ure and Swale at Swale Nab, about 18 miles above York, but

(c) *Simpson v. Godmanchester Corpn.*, [1897] A. C. 696 ; 19 Digest 14, 29.

(d) The address of their secretary is Elmhurst, Brooklands Avenue, Cambridge.

(e) Ss. 2, 3 and First Schedule, Part I. ; 23 Statutes 530, 535.

(f) The address of the clerk is Hill House, King's Lynn, Norfolk.

(g) 60 & 61 Vict. c. cxcvi.

(h) See Pilotage Orders Confirmation (No. 1) Act, 1922 (12 & 13 Geo. 5, c. xxxvii.).

(i) 18 Statutes 488.

this portion of the river, although navigable, is but little used for traffic.

Leaving York, the river proceeds by Naburn, Selby and Goole to Trent Falls, a distance of about $42\frac{3}{4}$ miles, where together with the River Trent it forms the estuary of the Humber.

Prior to 1757, the whole of the river up to York was tidal, with a rise of 3 feet at Ouse Bridge, York, but in that year a lock was constructed at Naburn, $5\frac{1}{2}$ miles below York, to give a greater depth of water at York.

There is a fair trade between York and Goole and Hull and intermediate places.

The river from Swale Nab to Widdington Ings, a distance of $9\frac{3}{4}$ miles, is under the jurisdiction of the Linton Lock Navigation Commissioners (*k*).

From Widdington Ings to a point 100 yards above Hook Railway Bridge, a distance of about 41 miles, the river is under the jurisdiction of the corp'n. of the city of York.

The navigation is vested in the York Corp'n. by the Act for improving the navigation of the River Ouse in the county of York of 1726 (*l*) and an amending Act of 1731 (*m*).

The powers of the York Corp'n. over the River Ouse are to repair, amend, maintain and improve the river under their jurisdiction, and to make the same navigable. The length of the river over which the corp'n. are authorised to levy tolls is that above Wharfemouth, which is about 11 miles below York.

From 100 yards below Skelton Railway Bridge to the mouth of the river at Trent Falls, a distance of 10 miles, the river is under the jurisdiction of the Undertakers of the Aire and Calder Navigation (*n*). This portion of the river was transferred from the jurisdiction of the York Corp'n. to the Aire and Calder Navigation by the Ouse Lower Improvement Act, 1884 (*o*). [1046]

River Parrett.—From a point 100 yards above Bridgwater Town Bridge to the mouth of the river at Bridgwater Bar, a distance of 19 miles, the river, as the port of Bridgwater, is under the jurisdiction of the Bridgwater Corp'n., as the navigation authority. The port of Bridgwater also includes Burnham and Highbridge on the River Brue.

The Bridgwater Corp'n. were constituted the port and navigation authority by the Bridgwater Navigation and Railway Act, 1845 (*p*), but it would appear that long before this they had control over the port, as a Charter of Henry VII., dated 1488, refers to the powers of control granted by earlier Charters.

The river, for purposes of land drainage, is under the jurisdiction of the Somerset Rivers Catchment Board (*q*), constituted under the Land Drainage Act, 1930, and consisting of 25 members. The Board are the only authority in respect of the river above Bridgwater, but navigation above Bridgwater has practically ceased. [1047]

River Severn.—The jurisdiction of the Severn Commissioners, as also the navigation of the river, commences at Gladder or Whitehouse

(*k*) The office of their secretary is at 1, Market Street, York.

(*l*) 13 Geo. 1, c. 33.

(*m*) 5 Geo. 2, c. 15.

(*n*) The office of the secretary is at Dock Street, Leeds.

(*o*) 47 & 48 Vict. c. clxi.

(*p*) 8 & 9 Vict. c. lxxxix.

(*q*) The office of the clerk is at 12, King Square, Bridgwater.

Brook, about 1 mile above Stourport, and extends to the Lower Parting, Gloucester, a distance of about 44 miles, including the Maisemore Channel from the Upper Parting to the point of junction with the old Herefordshire and Gloucestershire Canal.

After leaving Stourport, the river proceeds by Worcester and Tewkesbury to Gloucester. Below Gloucester, the continuation of the river to Avonmouth is an estuary having no controlling authority. Navigation between Gloucester and Sharpness, $16\frac{3}{4}$ miles, is carried on by means of the Gloucester and Berkeley ship canal of the Sharpness New Docks and Gloucester and Birmingham Navigation Co. on account of the shifting sands and strong tides in the river between these places.

The distance from Gloucester to Sharpness by the river is approximately 27 miles, and to Avonmouth 48 miles.

The Severn Commissioners (*r*) carry on their duties by virtue of the Severn Navigation Acts, 1842, 1844, 1846, 1853, 1869, 1881, 1914 and 1920 (*s*). They were incorporated by the Act of 1869.

The Commissioners are 35 in number, elected or appointed as follows :

- 6 by the justices of the peace for the counties of Gloucester and Worcester, in quarter sessions assembled ;
- 8 by the Gloucester and Worcester Corpns. ;
- 7 by the Bridgnorth, Bristol, Droitwich, Newport (Mon.), Shrewsbury, Tewkesbury and Wenlock Corpns. ;
- 1 by the proprietors of the Lower Avon Navigation and the proprietors of the Upper Avon Navigation, and the Evesham Corpn. successively ;
- 2 by the rated inhabitants of the Hamlet of Lower Mitton, in the Parish of Kidderminster ;
- 2 by the Staffordshire and Worcestershire Canal Navigation Co. ;
- 4 by the Sharpness New Docks and Gloucester and Birmingham Navigation Co. ;
- 1 by the Board of Conservators of the Severn Fishery District ;
- 3 by the Cardiff Corpn. ; and
- 1 by the Incorporated Chamber of Commerce of Cardiff.

The Commissioners have borrowed very considerable sums of money and have constructed locks and weirs at various places on the navigation, and they are authorised to levy tolls on merchandise and pleasure traffic, to be applied in the maintenance of the navigation, etc. [1048]

River Soar.—From Aylestone, 2 miles south of Leicester, the canalised River Soar forms the northern extremity of the Leicester section of the Grand Union Canal (*t*), which extends to the Trent, a total distance of 25 miles. [1049]

River Stour (Kent).—The river is tidal up to Fordwich, which is 2 miles north-east of Canterbury and 15 miles above Sandwich. Fordwich was formerly the port for Canterbury, and is a limb of the Cinque Port of Sandwich. From Fordwich, the river proceeds by Grove Ferry, Sarre and Sandwich to Pegwell Bay where it enters the North

(*r*) The office of their clerk is at Bank Buildings, Cross, Worcester.

(*s*) 5 & 6 Vict. c. xxiv. ; 7 & 8 Vict. c. x. ; 9 & 10 Vict. c. cccxi. ; 16 & 17 Vict. c. xlvii. ; 32 & 33 Vict. c. ciii. ; 44 & 45 Vict. c. ccv. ; 4 & 5 Geo. 5, c. xlii. ; 10 & 11 Geo. 5, c. xxiv.

(*t*) Letters should be addressed to the Manager and Secretary of the Grand Union Canal Company, 5, Lloyds Avenue, London, E.C.3.

Sea; its entire course being in the county of Kent. The river above Sandwich is no longer used for navigation. At Sandwich and from there to the sea it is known as Sandwich Haven.

The conservancy of the river from Poulders Sluice, a point about three-quarters of a mile above Sandwich, to the sea, a distance of about 5 miles, was by the Sandwich Port and Haven Act, 1925 (*u*), vested in a newly constituted body known as the Sandwich Port and Haven Commissioners (*a*).

The Board consists of six members, together with an independent chairman appointed by the Minister of Transport; three of the commissioners are appointed by the Sandwich Corpn. and the other three by Messrs. Pearson and Dorman Long, Ltd., owners of collieries in East Kent.

The Act of 1925 conferred on the Commissioners modern powers of conservancy and reduced the haven dues so as to suit the requirements of modern trade.

For purposes of land drainage, the river is under the jurisdiction of the River Stour (Kent) Catchment Board (*b*). [1050]

River Tees.—The jurisdiction of the Tees Conservancy Commissioners extends from High Worsall to a line drawn across Tees Bay from Redcar to Hartlepool.

The river commences to be navigable at High Worsall, and proceeds by Yarm, Stockton, Thornaby, Newport, Middlesbrough and Port Clarence to the North Sea, a total distance of about 22 miles.

The navigation is chiefly used by sea-going vessels which can navigate the river as far up as Stockton Bridge. Above this point there is a moderate amount of barge traffic.

The Tees Conservancy Commissioners (*c*) are constituted by the Tees Conservancy Acts, 1852 to 1922 (*d*), as follows:

3 appointed by the Minister of Transport;

Stockton Commissioners.

4 appointed by the Stockton Corpn.;

2 by payers of Tees dues;

2 elected by shipowners;

Middlesbrough Commissioners.

4 appointed by the Middlesbrough Corpn.;

2 elected by payers of Tees dues;

2 elected by shipowners;

Yarm Commissioners.

2 elected by ratepayers. [1051]

River Trent.—The navigation of the River Trent commences at Wilden Ferry in the counties of Derby and Leicester, and proceeds by Derwent Mouth to Beeston. At Beeston, the navigation leaves the main river and proceeds by Beeston Cut to Lenton Chain, where it forms a junction with the Nottingham Canal and is continued by that

(*u*) 15 & 16 Geo. 5, c. cxxvii.

(*a*) The address of their clerk is 1, Potter Street, Sandwich, Kent.

(*b*) The office of their clerk is at 16, Watling Street, Canterbury.

(*c*) The office of their clerk and general manager is at Middlesbrough, Yorks.

(*d*) 15 & 16 Vict. c. clxii.; 12 & 13 Geo. 5, c. vi.

canal through the city of Nottingham to Trent Lock, Nottingham, where it again joins the main river.

Below Nottingham, the navigation is continued by Newark and Gainsborough to the Humber. The Trent Navigation Co. control the river from Wilden Ferry to Gainsborough, except that portion from Trent Bridge, Nottingham, to Averham Weir, Newark, which has now become subject to the control of the Nottingham Corp'n. by virtue of the Nottingham Corp'n. (Trent Navigation Transfer) Act, 1915 (*e*). The management of this latter portion, however, still remains with the Trent Navigation Co. by agreement with the corp'n., so as to insure uniformity and avoid complication in the collection of tolls.

The distance from Wilden Ferry to Nottingham is approximately 13 miles, to Newark 37 miles, and to Gainsborough 68 miles.

The Trent Navigation Co. (*f*) is constituted under Acts of Parliament of 1858, 1887 and 1932 (*g*), and has six directors, elected by the shareholders at the annual general meeting.

Control of the river was inaugurated by an Act of Parliament of 1783 (*h*), prior to which the river had been a public navigation. The company were authorised to construct hauling paths, improve the river and collect tolls. An Act of 1794 (*i*) authorised further improvements by construction of side cuts and in other ways. An Act of 1858 (*k*) consolidated the previous powers and gave increased powers for improving and maintaining the navigation. An Act of 1887 (*l*) increased dredging powers and authorised the lease of the Newark navigation by the company, and an Act of 1906 (*m*) gave power to construct additional locks and weirs and to carry out extensive improvements in the navigation.

In 1882 the company adopted the Canal Carriers Act, 1845 (*n*), and since then have carried on the business of carriers in addition to their business of working the navigation.

From Gainsborough to the mouth of the river at Trent Falls is an open navigation, the controlling authority being the Humber Conservancy Board. All boats working between any of the Humber ports and Gainsborough or intermediate places have to take out yearly a certificate of registration for which an annual fee of five shillings is charged, no other toll being chargeable on river craft. [1052]

River Tyne.—The Tyne Improvement Commissioners have jurisdiction over the river from the seaward end of the Tyne piers, constructed by them at the mouth of the river, to Hedwin Streams, a distance inland of about 19 miles, and their area includes all streams, havens, creeks, bays and inlets within the flow and reflow of the tide.

Leaving Hedwin Streams, the river proceeds by Ryton, where it commences to be navigable, and continues by Newburn, Blaydon, Scotswood, Elswick, Newcastle, Gateshead, Walker, Wallsend, Hedburn, Jarrow, Howdon and North and South Shields, to the North Sea at Tynemouth.

The Tyne Improvement Commissioners were constituted by the River Tyne Improvement Act, 1850 (*o*), incorporated by the Tyne Improvement Act, 1857 (*p*), and are also subject to the Tyne Improve-

(*e*) 5 & 6 Geo. 5, c. lxvi.

(*f*) The office of their secretary is at Wilford Street, Nottingham.

(*g*) 21 & 22 Vict. c. xxxiv.; 50 & 51 Vict. c. cxv.; 22 & 23 Geo. 5, c. lxxiv.

(*h*) 23 Geo. 3, c. 41.

(*i*) 34 Geo. 3, c. 95.

(*k*) 21 & 22 Vict. c. xxxiv.

(*l*) 50 & 51 Vict. c. cxv.

(*m*) 6 Edw. 7, c. lvii.

(*n*) 14 Statutes 88 *et seq.*

(*o*) 13 & 14 Vict. c. lxiii.

(*p*) 20 & 21 Vict. c. lxxi.

ment Commission Act, 1875 (*q*); the Tyne Improvement Act, 1886 (*r*); the Tyne Improvement (Constitution and Works) Act, 1898 (*s*); and the Tyne Improvement Act, 1927 (*t*).

The present constitution of the Commissioners (*u*), 34 in number, is as follows:

Life Members.

2 appointed by the Minister of Transport.

Elected Triennially by Payers of Tyne Dues.

5 by shipowners;

5 by coalowners;

5 by traders;

1 co-opted by representatives of payers of Tyne dues.

Representatives of Municipal Corpsns. (Appointed annually.)

6 by Newcastle Corpns.;

2 by Gateshead Corpns.

3 by Tynemouth Corpns.;

3 by South Shields Corpns.;

1 by Jarrow Corpns.;

1 by Wallsend Corpns.

The Commissioners, who are the port and harbour authority, are amongst other things entrusted with the deepening, widening, straightening and improving of the river. They have constructed piers at the mouth of the harbour, the Northumberland and Albert Edward Docks and the coal shipping staiths connected therewith. They have provided moorings for the accommodation of vessels using the port, etc. They are also a police authority maintaining a separate police force (*a*), and are the lighting authority for the port. [1053]

River Waveney.—The first Act of Parliament relating to this navigation was passed in 1670 (see Journals of the House of Commons for that year) and was entitled “an Act for making navigable the rivers Brandon and Waveney,” but the river had been navigable previously to this.

From Bungay to one furlong below Shipmeadow Lock, where the weir stream enters the navigation, a distance of $4\frac{1}{2}$ miles, the river is under the jurisdiction of the East Norfolk Rivers Catchment Board (*b*).

From one furlong below Shipmeadow Lock to the junction with the River Yare, at the west end of Breydon Water, a distance of $21\frac{1}{2}$ miles, the river is under the jurisdiction of the Suffolk (River Waveney) Commissioners, who are a committee of the Great Yarmouth Port and Haven Commissioners (for whom see “River Yare”). [1054]

River Weaver.—The river commences to be navigable at Winsford Bridge in the county of Cheshire and continues by Hartford Bridge, Northwich, Acton Bridge, Dutton and Sutton to the Manchester Ship Canal at Weston Point Docks, a distance of 20 miles. The navigation is by an artificial cut from Sutton Lock, $3\frac{1}{2}$ miles long, which runs parallel with the old River Weaver, to Weston Marsh Lock and Weston Point Docks. Both these places are situated on the Manchester Ship

(*q*) 38 & 39 Vict. c. xxiii.

(*r*) 40 & 50 Vict. c. xxxiv.

(*s*) 61 & 62 Vict. c. viii.

(*t*) 17 & 18 Geo. 5, c. iv.

(*u*) The office of their secretary is at Bewick Street, Newcastle-on-Tyne.

(*a*) See the Third Schedule to the Police Pensions Act, 1921; 12 Statutes 894.

(*b*) The office of their clerk is at 16, Broad Street, Bungay, Suffolk.

Canal, on the opposite side of which the Weston Mersey Lock gives entrance to and exit from the River Mersey.

The river is under the jurisdiction of the Weaver Navigation Trustees (c), who are a public body incorporated by the Weaver Navigation Act, 1895, to administer the Weaver Navigation Acts, 1721 to 1895 (d). The trustees are 38 in number, and are appointed :

22 members by the Cheshire County Council ;

1 member by the Winsford U.D.C. ;

1 member by the Northwich U.D.C. ;

14 members by Weaver traders, elected as provided by the Act of 1895.

By sect. 34 of the Weaver Navigation Act, 1895, the powers, rights, duties and liabilities of the existing trustees were transferred to and vested in the trustees elected under that Act, and the powers, rights and duties so transferred will be found in the earlier Weaver Navigation Acts. They include power to make the Weaver navigable and to charge tolls. [1055]

River Welland.—There is very little trade done on any portion of the Welland. In wet seasons, the river is more or less navigable from Deeping St. James, where there is a weir across it, down to Spalding, a distance of 7 miles, but the navigation is very uncertain. From Spalding to the junction with the River Glen, a further distance of $4\frac{3}{4}$ miles, paying loads can only be carried on spring tides. From the junction with the River Glen to the mouth of the river at Fosdyke Bridge, a distance of 3 miles, the river is navigable for paying loads except on the very lowest tides. Below Fosdyke Bridge the river rapidly widens and enters the Wash.

The drainage of the whole of the river from its source to the sea is under the jurisdiction of the River Welland Catchment Board (e), which consists of 16 members, constituted under the Land Drainage Act, 1930. The navigation rights of the river are also under the jurisdiction of the Board. [1056]

River Witham.—The navigation of the river commences at the High Bridge, Lincoln, where it forms a junction with the Fosdyke canal of the London and North Eastern Rail Co., and proceeds by Washingborough, Bardney, Stixwold, Kirkstead, Tattershall Bridge, Dogdyke, Chapel Hill and Langrick to Boston. Four miles below this town the mouth of the river is reached near the outlet of Hobhole Drain, the artificial channel being carried a further distance of 3 miles through sand flats to Clay Hole, in the Wash.

The whole course of the river is within the county of Lincoln ; from Lincoln to Tattershall it skirts the Lincolnshire Wolds, and after leaving Tattershall passes entirely through fen country.

From the High Bridge, Lincoln, down to and including the Grand Sluice at Boston, a distance of $31\frac{3}{4}$ miles, the navigation of the river is leased by the London and North Eastern Rail. Co.

Below the Grand Sluice, Boston, the Boston Port and Harbour Commissioners (f) are the authority for the port under a Charter of Queen Elizabeth and various Acts of Parliament, the last one being the

(c) The office of their clerk is at Northwich, Cheshire.

(d) 7 Geo. I, c. 10 ; 58 & 59 Vict. c. cxi.

(e) The office of their clerk is at 11, Market Place, Spalding, Lincs.

(f) The office of their clerk is at Church Lane, Boston, Lincs.

Boston Dock Act, 1881 (*g*). The Act (by sect. 4) provides that it is to be carried into execution by the corpⁿ. of Boston acting by the council. The powers and functions of the Commissioners are to maintain the buoys, beacons and seamarks in the port, to provide quays and wharves in the river or haven and also a dock, warehouses, etc. The Commissioners provide means of transit to and from the dock by railway, which is carried by means of a swing-bridge across the river and connects with the London and North Eastern Rail. Co.

For the purposes of land drainage, the river is under the jurisdiction of the Witham and Steeping Rivers Catchment Board (*h*), to whom the river was transferred under the Land Drainage Act, 1930. This board consists of 24 members. [1057]

River Yare (or the Norwich River).—From Norwich to Hardley Cross, a distance of 18½ miles, the river with its bed and banks is under the jurisdiction, for all purposes, of the Norwich Corpⁿ., who appoint three members of the Great Yarmouth Port and Haven Commissioners. These three members together with five members co-opted from their general body by the Great Yarmouth Port and Haven Commissioners, form the Norwich (River Yare) Commissioners and exercise jurisdiction as to navigation and allied matters from Norwich to Breydon Water, a distance of about 25 miles, including the portion to Hardley Cross otherwise within the jurisdiction of the Norwich Corpⁿ.

From the upper end of Breydon Water, where the River Waveney falls into the Yare, to the mouth of the river at Gorleston, a distance of 7 miles, the river is under the jurisdiction of the Great Yarmouth Port and Haven Commissioners (*i*). The constitution of these Commissioners is provided for by the Great Yarmouth Port and Haven Act, 1911 (*k*).

Sect. 7 of the Act provides that there shall be nineteen commissioners of whom three are appointed by the corpⁿ. of Great Yarmouth, three by the corpⁿ. of Norwich (described by sect. 10 as the Norwich Commissioners), three by the Norfolk justices in general quarter sessions (described by sect. 11 as the Norfolk Commissioners), three by the Suffolk justices in general quarter sessions (described by sect. 12 as the Suffolk Commissioners), three elected by persons registered in the shipowners' and tollpayers' list, and one elected by persons registered in the yacht-owners' list. All these hold office for three years.

By sect. 38 the Norwich Commissioners with respect to the River Yare, the Norfolk Commissioners with respect to the River Bure, and the Suffolk Commissioners with respect to the River Waveney are to be separate committees of the Commissioners and to exercise the powers of the Commissioners with respect to those rivers, but under the general control and superintendence of the Commissioners who may appoint additional commissioners to sit on the committees. The members of the committees retain their full individual status as members of the general body of Commissioners. [1058]

(*g*) 44 & 45 Vict. c. cxii.

(*h*) The office of their clerk is at 28, Wide Bargate, Boston, Lincs.

(*i*) The office of their clerk is at 21, South Quay, Great Yarmouth.

(*k*) 1 & 2 Geo. 5, c. xcix.

CONSOLIDATED LOANS FUND

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FOR *General Borrowing Powers*, See TITLE "BORROWING."

Introductory.—The history of borrowing by local authorities reveals a steady progression from the practice of raising loans in respect of specific sanctions granted by a Government Department, the loans being secured upon a specific rate fund or the revenues of a specified undertaking and having separate sinking funds, correspondingly earmarked, to the more convenient and economical method of raising "general loans" charged indifferently on all the property, rates and revenues of the council, available for all or any purposes for which a borrowing power has been granted, and having associated with them pooled sinking funds which may be appropriated to authorised loans for new capital purposes. The chief obstacles to the development of improved methods of borrowing and loan management were the influence of custom on the practice of raising loans and the restrictive nature of the safeguards imposed by local or general Acts or the Stock Regulations. The first of these applied particularly to mortgages, which were commonly earmarked both as to the security mortgaged and the purposes to which the moneys borrowed must be applied, but the general adoption of a common form of mortgage led to the introduction of the "mortgage pool" as the first expression of loan consolidation. The powers and conditions necessary for this measure of consolidation are now established for county, borough, district and parish councils by the L.G.A., 1933, Part IX. (a). [1059]

Where a local authority's general loans consist wholly of mortgages or bonds, the proceeds of which are available in law for the purpose of (i.) all or any of the authority's statutory borrowing powers, or (ii.) all or any of their statutory borrowing powers under a particular enactment, all the advantages of loan consolidation may be secured by operating a "general loans pool" in the manner which is now prescribed for certain authorities by the Borough Accounts Order, 1930 (b) (see titles BONDS, BORROWING and MORTGAGES). But if some of the loans have been raised by an issue of corp'n. stock which it is desired shall form part of the "loans pool," a local Act must be obtained

(a) 26 Statutes 412.

(b) S.R. & O., 1930, No. 80, Art. 9 and Second Schedule.

removing the restrictions imposed by the Stock Regulations and enabling a "Consolidated Loans Fund" to be set up which will embrace (subject to certain exceptions) all the loan transactions of the authority.
[1060]

The Principle of Pooling Loans.—This principle is based on the modern view that borrowings by a local authority form a complete entity, rather than an aggregation of separate activities, and that their loans should therefore be regarded as a single liability, rather than as the aggregate of a large number of separate borrowings. Thus, in its evolution the loans pool bears some resemblance to the conception of the general rate, which has now been substituted for several separate rates (see title RATES AND RATING). It is now recognised that borrowing is a continuous process, which depends more on the general monetary situation and the total amount of outstanding loans of the authority, than on the particular purpose for which capital moneys are required. Instead of dealing with debt in water-tight compartments related to specific services or loans, which may involve, for example, the investment of sinking fund moneys at a time when it is necessary to borrow afresh (*i.e.* investing with one hand and borrowing with the other), sinking and redemption funds become available for new capital purposes, without the need (as in the case of stock redemption funds under the Stock Regulations of 1934 (c), and earlier Stock Regulations) for an application to the Minister of Health for his consent to each such appropriation, and the intricate accounting which this process involves. At the same time proper provision must be made for repayment of outstanding loans to lenders at the due dates. Moneys borrowed on favourable terms should benefit all the services of the authority on which moneys borrowed are expended, and not only those services which happen to require capital moneys at the favourable time, and it follows that one equalised rate of interest should be charged to all such services. But it is also necessary that the accounts of the authority's loan transactions should be self-contained, complete and clear.
[1061]

In a Consolidated Loans Fund the pooling principle is fully applied. A common loans fund is constituted, into which are paid, subject to certain exceptions, all capital moneys of the local authority from whatever source they are derived, including borrowings (whether by the issue of stock, mortgages, bonds, or other securities), capital receipts from the sale of assets, and moneys applicable to the repayment of debt. All these receipts lose their identity in the loans fund, which becomes a common pool of "money" or "cash," out of which loans are repaid and advances are made as required to those departments of the council by whom works are being executed for the cost of which an authority to borrow has been given. The fund acts as an intermediary between the lenders and the borrowing departments of the council, and there is therefore a complete dissociation of (i.) the raising and repayment of loans, in which the pool is concerned in *external* transactions with lenders, from (ii.) the exercise and discharge of borrowing powers, in which the pool is concerned in *internal* transactions with the borrowing accounts. Since the sinking fund contribution or other provision by the borrowing account (d) for the repayment

(c) S.R. & O., 1934, No. 619, Art. 13.

(d) "Borrowing Account" means any account or fund of the authority to which money has been lent or is deemed to have been lent from the loans fund (Model Scheme, Art. 1).

of debt is paid direct to the loans fund, it follows that *all sinking fund accounts are eliminated*; in effect, "advances" (e) are discharged on the same principle as instalment loans (see title BORROWING). [1062]

Interest charges also are pooled, and the borrowing accounts are charged yearly with the average rate of interest paid on all loans of the authority, *i.e.* the fund is recouped by the borrowing accounts on the proportionate basis of the total amounts of advances outstanding. The expenses of managing the loans fund are similarly recharged to the borrowing accounts on an average basis. [1063]

Advantages of a Consolidated Loans Fund.—The concentration of the whole of the local authority's loan operations in one central fund conduces to economical finance and simplifies the management of loan and debt transactions.

In the external operations of the fund, borrowings can be more easily arranged to coincide with favourable market conditions. The pool can be fed at all times in the best market, and when continuous borrowing by the issue of mortgages or bonds is practised, the amount of new loan money flowing in may be regulated by varying the rate of interest as required. The local authority may not, of course, raise loans in the aggregate exceeding the total amount of their statutory borrowing powers. The need for external borrowing is reduced, however, since all sinking funds become available for new capital purposes, and the increased flexibility of capital moneys which is ensured by this feature also leads to advantages where stock is to be redeemed, either by purchase in the open market or by repayment at maturity. The operation of funding debt when interest rates are low may be more easily carried out, for this involves merely the substitution of one external obligation for another, and does not affect any exercised borrowing power. Power is usually obtained to employ in the loans fund the moneys of departmental reserve funds, superannuation funds, etc., instead of investing such funds separately outside (see *post*); this is economical, and the costs of investment and risk of depreciation of investments are avoided. [1064]

The internal transactions of the fund mainly consist of a simple plan of advances to borrowing accounts which are repaid by yearly or half-yearly instalments during the period allowed by the appropriate borrowing power. Sinking fund accounts, and all the problems associated with the management of sinking funds, disappear, and all earmarking of stock or loans to a particular borrowing power is abolished. Difficulties which frequently arise out of the re-allocation of loans bearing a high rate of interest are removed by the averaging of interest charged. Savings in income-tax accrue to the council as the result of the increased range of the set-off, due to the absence of earmarking, of tax deducted from interest paid by the council against tax paid by them. Lastly, the accounts of the loan transactions can be drawn up with greater convenience and simplicity, so as to give a clear and comprehensive view of the local authority's financial position on capital account. [1065]

There are no disadvantages, other than those which may possibly arise on the inception of the scheme, due to the existence of loans at a high rate of interest specifically charged to a grant-aided service, *e.g.*

(e) "Advance" means any capital moneys lent or deemed to have been lent from the loans fund to a borrowing account or to another local authority in the exercise of a statutory borrowing power (Model Scheme, Art. 1).

housing (assisted schemes) or education, in which cases the effect of averaging the interest charge would cause financial loss to the authority. If thought necessary, however, any such disadvantage may be overcome by the inclusion in the scheme of a special provision. [1066]

The operation of a Consolidated Loans Fund calls for skilled and careful management. In view of the fact that all provision for redemption of debt is carried to the fund which may also include the balances of reserve, insurance or superannuation funds it may be important, in order to meet the obligations of the fund in a time of crisis, that a proportion of the fund should be kept "liquid," *i.e.* in cash or invested in statutory securities. The considerations necessary for the determination of the precise proportion of the fund to be so invested at any time must depend on the circumstances existing at that time, and some advantage may be lost if too great a proportion is invested. A duty is imposed in general terms by Art. 9 of the Model Scheme (*f*). [1067]

Usual Form of Clause in Local Acts.—The form of clause usual in local Acts preserves any existing priority enjoyed by any particular loan at the passing of the Act, but subject to this, all loans (including stock) are charged indifferently on all the revenues of the authority and are to rank equally with one another without any priority. Notwithstanding anything contained in any Act or order the authority are authorised to establish a consolidated loans fund, to which are to be paid :

1. all moneys borrowed by the authority, whether by issue of bonds, stock or other security, together with any moneys borrowed without security in connection with the exercise of any statutory borrowing power ;
2. all moneys of a capital nature received by the authority, whether from the sale of capital assets or otherwise, except such as are applied by the authority with due sanction to another capital purpose ; and
3. the appropriate sums provided in each year out of other funds of the authority to comply with the terms and conditions as to repayment attaching to their several borrowing powers or otherwise provided for the repayment of debt.

There must also be carried to the credit of the loans fund the unapplied balances of all moneys so borrowed or received and of all sums provided by the authority under head (3) before the date on which the fund is established.

The moneys of the fund are to be used—

1. in the redemption of stock or any other securities issued by the authority, the purchase of bonds or stock for extinction, or the repayment of any moneys borrowed by the authority ; and
2. in the exercise of any statutory borrowing power by transfer of the required amount to the appropriate fund and account of the authority.

Moneys not so used or applied in these ways, or about to be so used or applied within a reasonable period, must be invested in statutory

(*f*) See *post*, p. 498, and also "Investments," *post*, p. 505.

securities (*g*); the sums realised by the sale of such securities must be repaid on receipt to the loans fund; and the moneys of the fund must not be otherwise used or applied, except with the consent of the M. of H.

There must also be transferred to the loans fund such sums as are necessary to meet the interest charged and the financing and other revenue expenses connected with the management of the fund.

The authority may pay into the loans fund any moneys forming part of any reserve, renewals, depreciation, contingent, insurance, superannuation, or other similar fund, and not for the time being required; such moneys are to be deemed to be moneys borrowed by the authority, and may be used subject to the following conditions:

1. The moneys so used must be repaid to the lending fund as and when required for meeting the obligations for which that fund was established; and
2. Interest must be paid to the lending fund on any moneys so used and for the time being not repaid at such rate per cent. per annum as may be determined by the authority to be equal as nearly as may be to the average rate of interest payable by the authority on their current borrowings.

Moneys borrowed from the Public Works Loan Commissioners (see title PUBLIC WORKS LOANS ACTS) are not included in the consolidated loans fund. Local Bonds for housing (see title HOUSING BONDS) and certain other loans are also excluded—see note (*n*) on p. 497, *post*. [1068]

The clause also provides that the powers so conferred shall not be put into operation except in accordance with a scheme made by the authority and approved by the M. of H. For the guidance of local authorities a model scheme was prepared in 1929 by the Institute of Municipal Treasurers and Accountants (*h*), in consultation with the M. of H. The model scheme is based upon an experimental scheme made under a local Act by the Leeds Corporation, and approved by the M. of H., in 1927; the scheme was submitted to the Committee of the London Stock Exchange, who accepted an assurance that with the safeguards imposed by the scheme the principle of a consolidated loans fund would not prejudice the interest of the holders of Leeds Corporation Stock.

Specimens of clauses in recent local Acts will be found (with reference to county councils) in sect. 167 of the Essex County Council Act, 1933 (*i*), and sect. 52 of the Middlesex County Council Act, 1930 (*k*), and (with reference to boroughs) in sect. 93 of the Norwich Corporation Act, 1933 (*l*), and one applying to an U.D.C. in sect. 61 of The Maldens and Coombe U.D.C. Act, 1933 (*m*). [1069]

The Model Scheme.—The model scheme constituting a Consolidated Loans Fund is suitable for general adoption by local authorities possessing the requisite statutory powers, although local circumstances may require some few variations of its provisions. In the schemes approved by the

(*g*) The usual definition of "statutory security" covers any security in which trustees are for the time being authorised to invest trust moneys, except any security of the local authority by whom the loans fund is established, and any other mortgage, bond, debenture, stock, or other security authorised by or under any Act of Parliament, of any local authority except any security before excepted, and except securities payable to bearer.

(*h*) Of 1, Buckingham Street, Westminster, S.W.1.

(*i*) 23 & 24 Geo. 5, c. xlv.

(*l*) 23 & 24 Geo. 5, c. xxvii.

(*k*) 20 & 21 Geo. 5, c. clxvi.

(*m*) 23 & 24 Geo. 5, c. lxxxvii.

M. of H. a few technical improvements on the model have been introduced, and there is no doubt that experience of the working of schemes will lead to further improvements.

The main provisions of the model scheme are as follows, and, where appropriate, reference is made to the corresponding provisions of approved schemes which differ from the model scheme. [1070]

Establishment of the Loans Fund—(Part II.).—Art. 3 of the model Scheme provides for the establishment of a Consolidated Loans Fund, of which separate accounts must be kept, in which items in the nature of capital must be distinguished from items in the nature of revenue. Art. 4 prescribes the capital payments and transfers which are to be made to the loans fund, and defines them as capital moneys. Save as otherwise provided in the scheme (*n*) there must be paid to the loans fund as and when received all moneys and sums as provided in the local Act (see *ante*, p. 495), together with

1. any instalments repaid to the authority in respect of advances to other local authorities ;
2. the sums provided out of revenue under Part III. of the scheme for the purpose of defraying deferred charges (see *post*), or providing a reserve fund in respect of depreciation of investments of the loans fund (see *post*) ; and
3. all premiums on issues of stock and profits on transactions of the loans fund.

On the day on which the scheme comes into operation (referred to in the scheme as “the appointed day”) the unapplied balances of all redemption funds or other moneys referred to in Art. 41 are to be carried to the loans fund.

The revenue payments and transfers to be made to the fund are prescribed by Art. 5, and are to be deemed revenue moneys of the loans fund. They comprise :

- (a) all interest received by the authority on or after the appointed day in respect of the capital moneys described in Art. 4 ;
- (b) any fines, fees or other receipts applicable to revenue purposes arising from the transactions of the loans fund ;
- (c) any balances unapplied on the appointed day of such interest or receipts ;
- (d) such further sums as the authority are required by the scheme to pay to the loans fund in order to meet revenue expenses.

[1071]

By Art. 6, save as otherwise provided in the scheme (*n*), all liabilities of the authority in respect of borrowed moneys outstanding on the appointed day are to be transferred to the loans fund. [1072]

(*n*) By Art. 36 the provisions of the scheme (except as to accounts) do not extend to moneys borrowed or to be borrowed by the authority—

- “ (a) from the Public Works Loan Commissioners ; or
- (b) which are repayable by instalments extending over the whole period of the statutory borrowing power and which are shown by the deed to be raised in the exercise of a particular borrowing power mentioned therein ; or
- (c) by the issue of local bonds for housing.”

Local circumstances may justify the exclusion of other loans, *e.g.* a 6 per cent. stock issued to finance the erection of houses under the Housing, Town Planning, etc., Act, 1919. Alternatively, such loans could be dealt with as “Scheduled Advances” under Art. 18 ; see *post*, p. 500.

Art. 7 (1) provides that all investments (*e.g.* held on account of stock redemption funds) which are transferred to the fund at the appointed day shall be entered in the accounts of the fund at their *market selling price* on that day. This will involve writing up the value of the investment where the market value exceeds the book value, and in some approved schemes a more cautious treatment is prescribed by a variation of the model scheme to the effect that where the book value is *less* than the market value, the transfer is to be made at book value (*p*). Art. 7 (2) provides that any stock, the liabilities in respect of which are transferred to the loans fund, shall be entered in the accounts of the fund at the value at which the stock is to be redeemed. [1073]

Administration of Loans Fund—(Part III.).—The capital moneys of the loans fund may be applied only in the manner authorised by Art. 8 of the model scheme, viz. :

- (a) in the exercise of any statutory borrowing power by the transfer of the required amount to the appropriate fund and account of the authority, or where the authority are empowered to advance moneys on loan to another local authority by the payment of the necessary sum to that local authority ;
- (b) in the redemption or repayment of loans or the purchase of stock for extinction ; or
- (c) in defraying expenses incurred in the creation and issue of stock where those expenses may by law be spread over a term of years.

Capital moneys not so used or about to be so used must be invested in statutory securities (*q*), and any sum received on the realisation of such a security must be paid to the fund and be treated as capital moneys, except so far as it consists of discount on money bills. [1074]

Art. 9 requires the authority to administer the capital moneys of the loans fund so as to secure that at the date when the holders of any stock or other security become entitled to claim its redemption, moneys sufficient for the purpose are available. This is an important provision, designed to ensure that the external obligations of the fund are fully safeguarded, and its observance is a first essential in the management of the fund. [1075]

Art. 10 applies where the authority has obtained power to lend moneys of reserve funds, superannuation funds, etc., to the loans fund, and merely directs that the conditions attaching to the power shall be observed, and that such moneys shall be deemed to be capital moneys. [1076]

The revenue moneys of the loans fund are to be applied in manner provided by Art. 11, viz. :

- (a) In paying the interest on loans as and when it falls due ;
- (b) In paying the expenses connected with the raising of loans which are not defrayed out of capital moneys ;
- (c) In providing the annual contributions in respect of deferred charges (*see post*) ;

(*p*) This course was adopted in the Coventry scheme of 1930 and the Wolverhampton scheme of 1932.

(*q*) See note (*g*), *ante*, p. 496.

- (d) In meeting the other costs and charges connected with the administration or investment of the loans fund. [1077]

The simplicity of the principal transactions of the fund will be apparent from Art. 12 (1), which directs that statutory borrowing powers are to be exercised :

- (a) By making from the capital money of the loans fund such advances to the borrowing account or other local authority as are required for the purposes for which the statutory borrowing power was obtained ; and
- (b) by raising and carrying to the loans fund such loans as are necessary to enable that fund to make such advances out of the capital moneys of the fund. [1078]

The net loan debt of the authority (*i.e.* the sum arrived at by deducting the selling value of loans fund investments and cash in hand from the total outstanding debt to outside lenders, at nominal amount, and to other funds of the authority) must not at any time exceed the net total of the authority's exercised borrowing powers (Art. 12 (2) and Third Schedule), and the audited accounts and records of the loans fund must contain such particulars as will show that this requirement is at all times duly observed (Art. 12 (3)). Arts. 13—15 deal with advances, which are deemed to be due or owing by the appropriate borrowing accounts to the loans fund. The period within which any advance is to be repaid must be determined by the authority at the time when it is made, so, however, that the period must not exceed that prescribed by the statutory borrowing power. Advances are to be repaid, at the option of the authority, either by " fractional " or " annuity " instalments (*r*), and either yearly or half-yearly, and as far as practicable the instalments are to be so adjusted as to be expressed in complete pounds (thus avoiding considerable clerical labour). Where annuity instalments are employed, the assumed rate of accumulation must not exceed $3\frac{1}{2}$ per cent. or such other percentage as the M. of H. may from time to time approve (Art. 14). Under Art. 15 the treasurer must keep a register of advances showing the amount, purpose and period of repayment of each statutory borrowing power of the authority, and when an advance is made must enter therein the amount and date of the advance, and the amounts of the instalments which are to be repaid to the loans fund, together with the dates on which they are due. Where an advance is to be repaid by annuity instalments, a list of the instalments due throughout the period must be entered and totalled in the register immediately. Entries must also be made of any special repayment applied in reduction of an advance. [1079]

The net amount of any money borrowed before the appointed day is to be deemed to have been provided by means of an advance from the loans fund to the appropriate borrowing account, *i.e.* the gross sum

(*r*) " Instalments " in connection with the repayment of advances means—

- (a) equal yearly or half-yearly instalments of principal (in the scheme referred to as " fractional instalments ") ; or
- (b) such instalments of principal as when combined with interest on that portion of the advance which is outstanding, will cast as nearly as may be an equal burden on each year or half-year of the unexpired portion of the period of the advance (in the scheme referred to as " annuity instalments ") (Art. 1).

For a comparison of the instalment and annuity methods of repayment, see title BORROWING—" Methods of Repayment," at p. 210 of Vol. II.

borrowed *less* (a) repayments made before the appointed day, (b) the market selling value (*s*) on the appointed day of any redemption fund, and (c) the amount of any unexpended balance of the money borrowed which is transferred to the loans fund. Particulars of the net amounts of such advances must be entered by the treasurer in the register of advances, together with particulars of the appropriate repayment instalments. If the repayment of the loan has previously been provided for by an accumulating redemption fund or by annuity instalments, the authority may at their option change over to fractional instalments (Art. 16). But this step may considerably increase the burden of loan charges during the early years of the scheme. [1080]

Art. 17 deals with the application of special capital receipts, from the sale of assets or otherwise, which are paid into the fund. Such moneys must first be applied in reduction of the advance from the loans fund in respect of which they were received. If the advance has been wholly repaid or if there is no advance to which the receipt has reference, or if the advance outstanding is less than the amount received, the receipt or the balance thereof must be treated as a loan to the loans fund until the M. of H. otherwise directs, interest being paid by the loans fund to the lending account. In some of the approved schemes the latter part of this provision is varied; instead of the capital moneys or any balance thereof being treated as a loan to the loans fund, they are to be applied in the reduction of an advance (if any) to the fund or account to which they belong, or if there is no such advance, in the reduction of such other advance as the authority may determine; this variation ensures that capital receipts are immediately applied in repayment of debt. [1081]

Art. 18 permits the authority to exclude certain advances from the interest-pooling provisions of the scheme, by including details of such advances in the first schedule to the scheme, which must also contain particulars of the special rates of interest payable on the advances and the periods for which they are to be paid. The creation of "scheduled advances" at special rates of interest is contrary to the true principles of a Consolidated Loans Fund, and some approved schemes do not contain any such schedule. Practical considerations operating at the time of the inception of a scheme may, however, justify the maintenance of either specially light or specially onerous rates of interest for certain loans (*t*). With the Minister's consent, the schedule may subsequently be amended. [1082]

The charging of interest to the borrowing accounts is provided for by Art. 19. First, the net amount of interest must be ascertained, *i.e.* the interest payable on loans, less interest receivable on investments and on any loans advanced to other authorities. Then there is deducted the amount of interest charged to the borrowing accounts in respect of the advances (if any) entered in the 1st schedule to the scheme, and allowance is made for any sums which under the scheme are to be

(s) *I.e.* the value ascertained in accordance with Art. 7 (1), see *ante*, pp. 497, 498.

(t) A scheduled advance is excluded merely from the provisions of the scheme as to charging interest to the borrowing accounts, but is otherwise subject to all other provisions of the scheme. If it is desired to exclude a loan (*e.g.* a stock issue) from the scheme entirely, this may be done by enlarging Art. 36 (see *post*). It may be noted that in one known instance an authority in their approved scheme scheduled certain advances at a special interest rate of 1 per cent. per annum in respect of an old 3 per cent. stock issue, the earnings of the stock redemption fund being sufficient to reduce the interest charge to that rate.

debited or credited to the interest account (*i.e.* in respect of deferred charges and premiums, see *post*). The balance remaining is to be apportioned over the borrowing accounts, as follows: (1) where an advance or repayment of advance has been made or received during the currency of the year, interest (at a rate corresponding with the rate of interest payable on loans raised at the date of the advance or repayment) must first be charged or allowed to the appropriate borrowing account in respect of the period between the date of advance or repayment and the end of the year; (2) the remainder of the net amount is then apportioned between the borrowing accounts in the proportion which the outstanding advances (exclusive of the scheduled advances) to each borrowing account at the commencement of the year bears to the total outstanding advances (exclusive of scheduled advances), at the same date. If desired, interest may be apportioned on a half-yearly basis, instead of yearly.

Expenses defrayed out of capital moneys of the fund in the creation and issue of stock are to be treated, together with any discount liability assumed in respect of the stock, as deferred charges (Art. 20). Such deferred charges are to be written off by a proportionate amount each year until the stock first becomes redeemable, and *debited* to the interest account, so far as they relate to discounts, and to the loans fund expenses account, so far as they relate to expenses. [1083]

Conversely, under Art. 21, such amount of any premium received on an issue of stock as remains after charging against it the expenses of issue of the stock, must be applied by *crediting* to the interest account a proportionate amount each year until the stock first becomes redeemable. Since discounts and premiums arise from the adoption of a lower or higher rate throughout the life of the stock, it is logical to deal with them in the interest account. [1084]

Art. 22 requires investments made on or after the appointed day to be entered in the accounts at cost price exclusive of expenses of investment, and Art. 23 deals with depreciation of loans fund investments. At the end of each financial year the investments must be valued. When the *total* selling value of the investments is first found to be less than the *total* book value, the difference, representing depreciation, is to be treated as a loss which is debited to Loans Fund Expenses Account, and a reserve fund is to be created which may be used to defray any loss arising on the sale of any investments. Subsequent appreciation in the total selling value of the investments must, so far as the reserve permits, be treated as a profit and the depreciation reserve correspondingly reduced; subsequent depreciation would again be treated as a loss and result in an increase of the reserve. In several approved schemes a more conservative basis is adopted for valuing investments, whereby depreciation only is taken into account, appreciation being ignored until realisation takes place; further, the investments are valued individually, so that depreciation of one investment is not offset by appreciation of another. In effect, where these variations are made, each investment will stand in the accounts at the lowest selling value reached at the end of any year since purchase. [1085]

The net profit or loss arising during each year on (a) realisation of investments; (b) repayment of loans; or (c) purchase of stock or other securities of the authority, must be ascertained under Art. 24 at the end of the year, and after deducting, or adding to it any depreciation under the preceding article, it must be credited or debited to the Loans Fund Expenses Account. But if the net profit or loss

exceeds the product of a penny rate (*u*), the excess over that amount must be carried forward as a deferred credit or deferred charge, being treated as capital moneys or temporarily defrayed out of capital moneys, as the case may be. Where such balance carried forward is greater than the product of a threepenny rate, the authority must submit to the Minister of Health a scheme for its application or liquidation. Here again some of the approved schemes differ from the model, in two respects. They provide that instead of taking credit for any profit, the whole of such profit is to be carried forward, so as to be available as a capital reserve towards meeting any future losses. Further, the measure of losses is more appropriately related to the amount of the outstanding advances, instead of to rate product; any net loss exceeding *one-eighth per cent. on the total amount of advances outstanding* is to be carried forward, and if the amount carried forward at any time exceeds *one-half per cent.* on such advances a scheme must be prepared for the liquidation of the loss, which, however, need not be submitted to the Minister of Health. [1086]

Loans fund expenses, comprising (a) the cost of raising loans, (b) the annual contributions to expenses of issue (deferred charges), (c) any proportion of losses debited under the preceding article, and (d) the other expenses, including staff salaries and general office expenditure, must be brought together under Art. 25, and after deducting from the sum of those items (a) items specifically chargeable to borrowing accounts, (b) any proportion of profits credited under the preceding article, and (c) fines, fees or other revenue receipts, the balance is to be apportioned between the borrowing accounts in the proportion which the advances to each borrowing account outstanding at the *end* of the year bears to the total of all such advances. [1087]

Art. 26 directs that sums from time to time required to meet the revenue charges of the loans fund must be provided by the borrowing accounts at such times (*e.g.* by quarterly transfers) as will enable the charges to be met as they arise. [1088]

Accounts, Returns, etc. (Part IV).—Art. 27 of the model scheme prescribes certain accounts which must be kept on the double entry system, and the article requires such other accounts to be kept as are necessary to present a full and correct account of the transactions of the loans fund. The prescribed accounts are as follows:

A. PERSONAL ACCOUNTS OF—

Officers :

- The Treasurer in a cash book showing separately capital and revenue moneys ;
- The Registrar of Stock ;
- Any other officer having cash transactions in respect of the loans fund.

Creditors :

- Stockholders in respect of each class of stock ;
- Mortgagees in respect of loans ;
- Other lenders (if any) in respect of annuities, debentures, money bills or any other class of loan ;

(*u*) This means the product last mentioned under the R. & V.A. (Product of Rates and Precepts) Rules, 1929 and 1933 (S.R. & O., 1929, No. 12, and 1933, No. 786). See also title "Penny Rate."

The authority in respect of loans from other funds to the loans fund ;
Inland Revenue in respect of income tax deductions ;
Lenders in respect of unclaimed interest ;
Other creditors (if any).

Debtors :

Borrowing accounts in respect of advances from the loans fund ;
Other local authorities in respect of advances from the loans fund ;
Governments, corporations or other persons in respect of investments held by the authority ;
Other debtors (if any).

B. IMPERSONAL ACCOUNTS OF:—

Deferred charges ;
Deferred credits ;
Profits and losses ;
Interest due to and from the loans fund ;
Loans fund expenses.

C. LOANS FUND BALANCE SHEET. [1089]

Art. 28 requires the annual preparation by the treasurer of a statement showing in respect of each statutory borrowing power (a) the date, authority, purpose, period and amount of the power ; (b) the date and amount of each advance from the loans fund in the exercise of the power ; (c) the amount of each advance outstanding at the commencement of the year, the amount repaid to the loans fund during the year, the amount outstanding at the end of the year, and the number of years over which the remaining repayment is to be spread. Under Art. 29 the treasurer must prepare at the close of each year an abstract of the loans fund accounts and a statistical statement, in the forms scheduled to the scheme, and a copy of this abstract and statistical statement (to which a special certificate of the observance of all statutory and other regulations must be appended by the auditors of the accounts of the fund) has to be forwarded to the Minister of Health (Art. 30). Art. 31 applies either district or professional audit (as appropriate) to the accounts of the fund, but does not recognise an audit by borough elective auditors as a sufficient audit. [1090]

Art. 33 requires the town clerk or clerk of the council to furnish the Minister of Health when required with returns which will enable the Minister to satisfy himself that all the conditions imposed by the scheme have been duly observed. If the Minister should find that any provision of the scheme has not been observed, or that the council have applied moneys of the loans fund to unauthorised purposes, he may by order direct the council to pay or apply the sum of money in respect of which default has been made, and if necessary may obtain a *mandamus* to enforce his order. [1091]

Supplemental—(Part V).—Art. 34 of the model scheme amends any local Act or provisional order governing the issue by the council of stock, and Art. 35 modifies the general Stock Regulations by providing that (1) stock created under the authority of the regulations shall not be deemed to have been created or to be created in respect of any

specific borrowing power; and (2) any provision in the regulations authorising the authority to create and issue stock in the exercise of a statutory borrowing power shall be read as authorising the authority, with the consent of the Minister, to create and issue redeemable stock of such amount, as will produce a sum which does not exceed the aggregate of such of the statutory borrowing powers of the authority as have not, at the time of the creation of the stock, otherwise been exercised (see "Issue of Stock," *post*). It has already been mentioned in footnote (n), on p. 497, *ante*, that by Art. 36 certain loans are excluded from the scheme; but in order that the accounts of the loans fund may comprise a complete picture of the transactions of the authority in relation to loans, particulars of the excluded loans must be included in the loans fund accounts and statistical statements. [1092]

Art. 37 protects existing securities and priorities, and Art. 38 provides that nothing in the scheme shall affect any financial arrangement existing at the appointed day between any Government Department and the authority as to the basis of Parliamentary Grants. Art. 39 is also a saving clause and provides that nothing in the scheme shall affect any enactment defining the methods of borrowing or the security for moneys borrowed by the authority. Under Art. 40 the scheme is to have effect notwithstanding anything contained in any then existing Act or order, but subject, nevertheless, to the provisions of any future scheme which may be approved by the Minister. [1093]

Management of the Fund.—The day-to-day transactions of the loans fund mainly comprise the raising and repayment of loans, the receipt of interest on investments, and the payment of interest on loans. It is convenient in practice for advances and repayments of advances to be made at uniform dates, *e.g.* on September 30 and March 31, thus facilitating the calculation of interest charges. It is customary to arrange for a bank overdraft (see title **BANKERS' AND OTHER OVERDRAFTS**) on the Loans Fund Account, and the daily level of the fund balance, as shown in the separate banking account, is available as a guide to the need or otherwise of "feeding the pool" by new borrowings. The level at which it is desirable to maintain the bank balance will be determined by local circumstances; some authorities choose, for example, to maintain an overdraft on loans fund account of an amount exceeding the aggregate of all other credit bank balances of the authority, one effect being that the credit balances earn a higher rate of bank interest than would otherwise be earned.

The fact that all transactions between the loans fund and the borrowing accounts are in terms of cash simplifies their working. The adoption of fractional instalments for the repayments of advances is a further simplification, as it avoids the need of table calculations.

Funds sufficient to meet the revenue expenses of the loans fund (*i.e.* interest on loans and loans fund expenses) must be provided during the year, and for this purpose the amounts due from the several borrowing accounts are determined upon an estimate and paid by (say) quarterly instalments, an adjustment being made after the correct liability has been ascertained at the close of the year.

Apart from these transfers, it is possible, by arranging that all advances and repayments of advances shall take place on March 31, to make all transfers between the loans fund and the borrowing accounts at the end of the financial year, except any special capital receipts

applied in repayment of an advance. The external operations of the loans fund are, however, carried on daily, *quite independently of the borrowing accounts*; the pool may be fed by local borrowings received on the security of mortgages (see title MORTGAGES) or bonds (see title BONDS), and repaid loans or instalments of loans falling due for repayment, resort being had to an increase of the bank overdraft in periods when local investors fail to supply sufficient money. [1094]

Investments.—The model scheme makes no compulsory requirement that a specified proportion of the assets of the loans fund shall consist of investments, although Art. 8 (2) directs that surplus capital moneys in hand for the time being must be invested (*i.e.* temporarily) in statutory securities. In effect, however, the scheme permits the holding of investments to a very large amount. Almost invariably securities representing sinking fund investments are held by the council when the scheme comes into force, and these must be transferred to the loans fund in accordance with Arts. 4 (1) (d) and 7 (1). Further, where “spare moneys” of reserve and superannuation funds, etc., are transferred to the loans fund, it is convenient to transfer any outside securities representing invested moneys to the loans fund, thus securing the advantage of centralising all the authority’s investments in one fund, and bringing them equally within the scope of the rules of the scheme as to valuation, depreciation and profits and losses on realisation. But while investments are thus commonly held on loans fund account as an incidental feature of the establishment of a Consolidated Loans Fund, opinion is divided as to the real need for holding investments as a general “reserve” against maturing loans. On the one hand it is argued that as funds to meet loans falling due for repayment may be provided by re-borrowing for the remainder of the period for which the original loan was authorised (*a*), and that as it is always more economical to appropriate capital moneys in hand to fresh borrowings, the holding of large investments is unnecessary, and, in fact, contrary to the pooling principle upon which the Consolidated Loans Fund is founded. Advocates of this view recognise that at a time of financial crisis market conditions may be very unfavourable when re-borrowing is necessary, but they point out that these conditions would also operate unfavourably on a sale of securities (*b*). On the other hand are those who consider that the obligation imposed by Art. 9 of the scheme, viz. that the capital moneys of the fund shall be administered so as to secure that on the maturity of any stock or other security, moneys sufficient for redemption shall be available for the purpose, is not met by a mere reliance on the power to re-borrow at the date of redemption, but that a proportion (say, 10 per cent.) of the fund’s assets should be invested in gilt-edged securities to form a reserve against liabilities: in other words, that the test of the stability of a loans fund balance sheet is the character and amount of the outside investments held in relation to the due dates and amounts of the liabilities to stockholders and other lenders. The Consolidated Loans Fund is, very largely, an improved means of employing sinking funds for new capital purposes, and it must not be forgotten that the Select Committee (*c*)

(a) See s. 216 of the L.G.A., 1933; 26 Statutes 423.

(b) See also *ante*, p. 495.

(c) Select Committee on the Application of Sinking Funds in Exercise of Borrowing Powers (1909). See title BORROWING, “Utilisation of Redemption and Sinking Funds for New Capital Purposes.”

which considered this matter in 1909 reported that the practice of using sinking funds for new capital purposes was, *if properly safeguarded*, financially unobjectionable. Those who favour the holding of investments consider that an adequate reserve of realisable investments is necessary as a "proper safeguard" on the wider use of sinking funds now permitted by a scheme. [1095]

Issue of Stock.—As mentioned above, the model scheme (Arts. 34—35) modifies the provisions of any local Act or order authorising the issue of stock and the General Stock Regulations, so as to provide that stock may be created and issued for "general" purposes (to an amount not exceeding the aggregate of the unexercised statutory borrowing powers), instead of being earmarked to specific borrowing powers. In consequence, some alteration is necessary in the form of the Consent Order which is made (where required) by the Minister of Health to authorise a creation and issue of stock (*d*). The usual form of Consent Order gives details of the specific borrowing powers to which the proceeds of the stock issue are to be applied, and an application for the issue of a Consent Order must therefore be accompanied by appropriate details of the unexercised sanctions (see title *Stock*). Where a Consolidated Loans Fund is operated, however, a rather different set of particulars must be furnished to the Minister of Health. [1096]

Stock issues are made with one of two objects: (1) for the financing of large and immediate commitments, or (2) for the funding of short term debt which has been repaid or is falling due for repayment. In the first case, the Minister of Health requires to be satisfied that the sum to be raised by the issue of stock does not exceed the aggregate of the borrowing powers exercisable by the local authority. Where the proceeds of the stock will be used wholly or partly in paying off loans already borrowed, the Minister requires to be satisfied that the sum to be so applied is within the reborrowing powers of the local authority, and that the money can and will be used within a reasonable period for the repayment of other loans. [1097]

The following particulars are accordingly required to be furnished to him:

(a) *Borrowing Powers and Loan Debt.*—Up-to-date statements of borrowing powers unexercised and exercised (in the aggregate), and particulars of loan debt (showing total outstanding debt, investments and net debt), with an analysis of the outstanding debt to outside lenders, under each form of borrowing (stock, short-term mortgages, bonds, etc.). [1098]

(b) *Existing Loans to be paid off by the Issue of Stock.*—A summarised statement giving the description and amount of the various securities, etc., to be paid off, and the dates at which the local authority have the option to redeem the loans. This statement should include the amount of any bank overdraft on capital account of the loans fund to be liquidated out of the proceeds of the issue. [1099]

(c) *New Loans (i.e. Moneys to be Applied in the Exercise of New*

(d) See Art. 3 of the Local Authorities (Stock) Regulations, 1934; S.R. & O., 1934, No. 619.

Borrowing Powers).—A statement showing the new borrowing powers to be financed from the loans fund out of the proceeds of the stock issue, and the approximate periods within which the actual expenditure will have to be met. [1100]

- (d) *Proposed Terms of Issue*.—(These particulars do not differ from those invariably required in connection with any application for a consent order (see title *Stock*). [1101]

In general, the preliminary work prior to an issue of stock is lessened under a Consolidated Loans Fund Scheme, while the subsequent management of the stock is considerably simplified. For example, it is no longer necessary to obtain a further consent order authorising the utilisation of redemption funds for new capital purposes. [1102]

In the published prospectus of the stock it is highly desirable, in the interests of clarity, that the public should be fully apprised of the fact that there will be no specific redemption fund to support the stock, and that the obligation to redeem the stock at maturity is one that will be met in accordance with the terms of the Consolidated Loans Fund Scheme. In place of the usual paragraph relating to redemption funds, a statement on the lines of the following paragraph should therefore be inserted :

“Provision for the redemption of the debt created by this issue of Stock will be made in accordance with the Corporation's Consolidated Loans Fund Scheme, which was authorised by sect. of the Act, 193 , and approved by the Minister of Health on the day of , 193 ; the Scheme requires an abstract of the accounts and a statistical statement of the Loans Fund to be supplied yearly to the Minister.” [1103]

London.—In the preceding part of this title, the term “Consolidated Loans Fund” has been used in the wide sense of a fund established in connection with the recent practice of financing capital expenditure by means of a “Loans Pool.” This, however, is not the meaning which must be attached to the term in the case of the L.C.C.

The Metropolitan Board of Works, the predecessors of the L.C.C., was the pioneer amongst local authorities in obtaining powers to issue stock to meet its capital expenditure, and as a condition of the granting by Parliament of such powers, the Board was required to set up a Consolidated Loans Fund in order to provide adequately for the dividends on and redemption of such stock. Prior to the Metropolitan Board of Works (Loans) Act, 1869, the Board raised its loans from the Bank of England on a mortgage of the rates under the guarantee of H.M. Treasury. It is interesting to recall that the “Economist” of that day, referring to the results of this first issue of stock by the Board, said, “The Metropolis is thus in better credit than any government in the world except England.” The new security was to be called “Metropolitan Consolidated Stock,” and the setting up of the consequential Consolidated Loans Fund was dealt with in sect. 26 of the Act, as follows—

“For the purpose of paying the dividends on and redeeming consolidated stock created under this Act there shall be established a fund to be called the consolidated loans fund of the metropolis, in this Act referred to as the consolidated loan fund, and, subject to the provisions of this Act, the board shall keep a separate account of such fund.”

The Act also prescribed the manner in which the Consolidated Loans Fund was to be administered and how it might be used. The Act of

1869 was repealed by the L.C.C. (Finance Consolidation) Act, 1912 (e), which provides that the Council, with the approval of the Treasury, may make regulations for carrying into effect the provisions of the Act with respect to the Consolidated Loans Fund and such regulations shall (amongst other things) provide for separate accounts being kept of the sums carried to and paid out of the Consolidated Loans Fund in respect of income and capital respectively.

This fund possesses a certain similarity in structure to that of the Consolidated Loans Fund of the Model Scheme, but the council's fund is restricted to the service of debt and does not constitute a general pool for the receipt and issue of capital moneys to services. The capital section is essentially an aggregate sinking fund, sub-divided according to the various denominations of stocks and bonds outstanding; it receives the annual contributions by services for repayment of debt, repayments of loans advanced to outside bodies and others, proceeds of sales, etc. Moneys standing to the credit of this section of the fund may be applied to defray fresh capital expenditure pending their application to reduce external debt.

These advances to services (internal borrowing) are, however, only one method of borrowing. Moneys raised from external sources (e.g. London County Consolidated Stocks, Local Bonds for Housing) are kept in separate accounts, according to their origin.

The income section of the fund bears a close relation to the income section of the Model Fund; it receives contributions by services for interest on debt, interest on loans advanced to outside bodies and others, rents, etc., and is charged with the payment of dividends on the council's stocks and bonds.

The services to which proceeds of stocks and bonds have been allocated in the first instance remain responsible for the original amounts allocated until the stocks and bonds are redeemed. In consequence the services are charged with interest on the gross debt outstanding, and, on the other hand, are credited with proportions of interest earned by investments of the capital account of the loans fund, including interest on advances made out of the fund.

The rate of interest charged on these advances is the equivalent, as nearly as may be, of the cost of raising stock at the time of making the advance. With the approval of H.M. Treasury separate rates are fixed for each year's advances, and these rates operate so long as any portions of the advances remain outstanding.

It will be seen, therefore, that the council has not adopted the principle of a "Loans Pool" referred to earlier in this title.

The only public authorities in the Administrative County of London which have power to issue stock are the L.C.C., the Corpn. of the City of London, the Metropolitan Water Board and the Port of London Authority. The metropolitan borough councils have no power to issue stock or housing bonds, the method of borrowing authorised by statute in the case of these bodies being by way of mortgage of the rates. In practice, these mortgage loans are repayable to the lenders by periodical payments, and no question of the setting up of a sinking fund arises in such cases. The metropolitan borough councils have power under the L.C.C. (General Powers) Act, 1924 (f), to make use of any moneys forming part of any sinking fund or of any reserve fund

(e) 2 & 3 Geo. 5, c. cv.

(f) 11 Statutes 1367.

or superannuation fund of the borough council for the purpose of meeting capital expenditure in lieu of borrowing, and provisions are made in the Act governing the repayment of any moneys so used.
[1104]

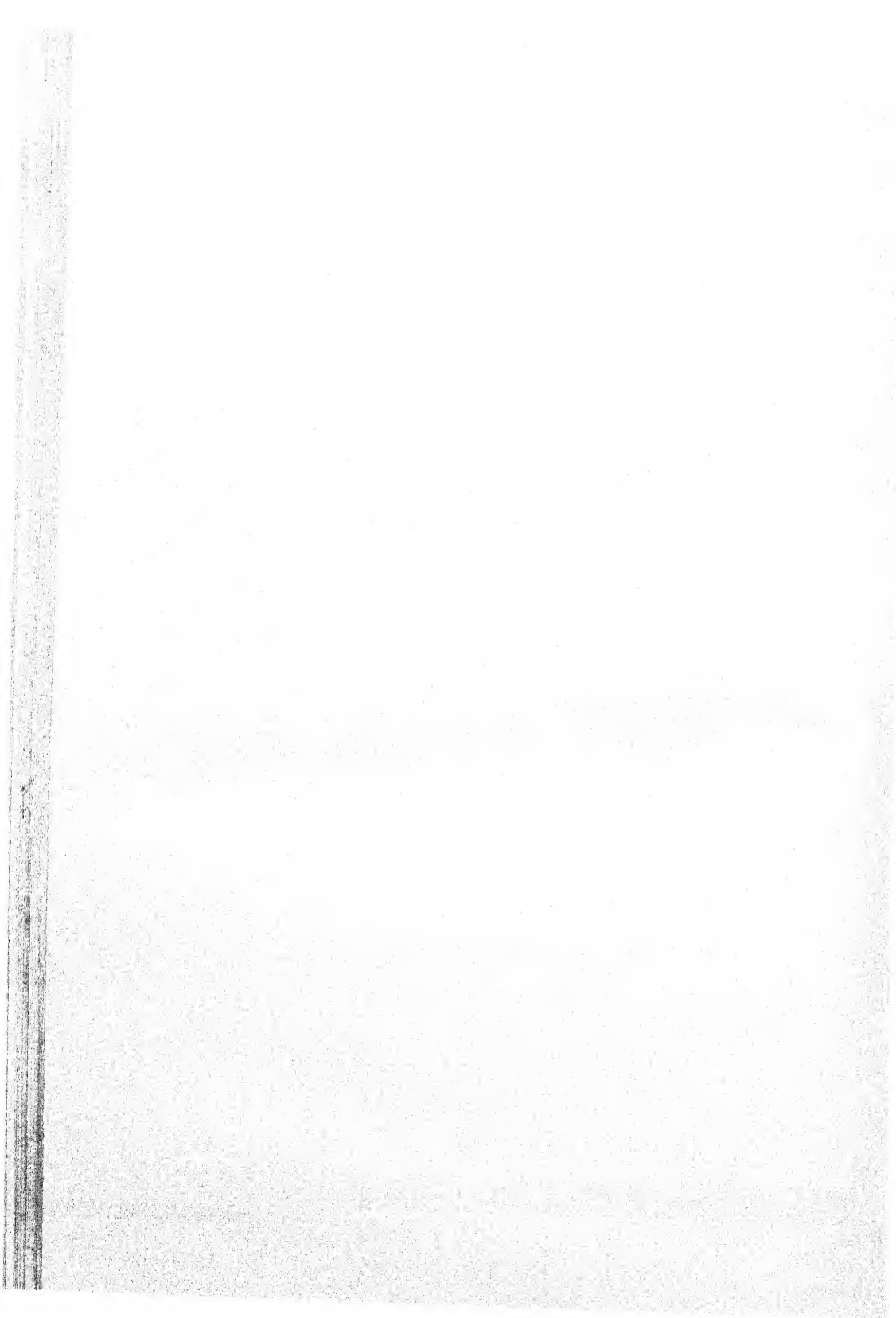
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END OF VOLUME III.



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